BLA

TREATISE

BLATIVE TO THE

MARITIME LAW of ENGLAND,

IN THREE PARTS.

"PARS PRIMA.
" De Jure Maris et Brachsorum ejusdem.

"PARIS SECUNDA.
"De Portibus Maris.

"PARS TERTIA.
"Concerning the Customs of Goods imported and exported."

FROM A

MANUSCRIPT of LORD CHIEF-JU STICE HALE.

The manuscript, from which this treatise is printed, was a present to the other from George Hardinge, Esquire, Sollicitor-General to the Queen. There cannot be the least doubt of its being written by lord chief-justice Hale, though it is not in his hand-writing, but appears to be a fair copy by some transcriber. The contents agree with the articles No. 20, and 21, in the lift of lord chief-justice Hale's manuscripts at the end of his life by bishop Burner.]

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- 2. Of the right or prerogative in private or fresh rivers.
- 3. Concerning public streams.
- 4. Concerning the king's interest in salt waters, the sea and its arms, and the soil thereof; and the right of fishing there.
- 5. The right which a subject may have in the creeks or arms of the sea, and how it may be acquired.
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- 19. Concerning aliens at large, and who are liable to alien's customs.
- 20. When customs and subsidies shall be faid to be due, and when note.
- 21. Concerning the entry of goods inwards and outwards, and how to be made.
- 22. What shall be faid a shipping to entitle the king to the subsidies, &c.
- 23. Concerning the times and places for lading and unlading of goods.
- 24. Touching repayment of customs or duties once paid upon emergencies.
- 25. Concerning the custom of Newcastle coals, its original and progress.
- 26. A general discourse touching the customs of cloaths, as well exported as folds within the kingdom, and therein concerning always.
- 27. Concerning the fubfidy of alnage.
- 28. Concerning things taken upon the fea, letters of marque and reprifal.

PARS PRIMA.

De Jure Maris et Brachiorum ejusdem.

C A P

Concerning the interest of fresh rivers.

RESH rivers, of what kind soever, do of common right belong to the owners of the soil adjacent; so that the owners of the one side have, of common right, the propriety of the soil, and consequently the right of sishing, usque filum aque; and the owners of the other side the right of soil or ownership and sishing unto the filum aque on their side. And if a man be owner of the land of both sides, in common presumption he is owner of the whole river, and hath the right of sishing according to the extent of his land in length. With this agrees the common experience.

Vide Mich. 18. 19. Ed. 1. B. R. Rot. Nott. in an affize by Robert Baker against Hugh Hercy for hindering his fishing in the water of Idell.

Juratores dicunt, quod prædictus Hugo non tenet prædictam piscariam in separali suo, simul cum: Roberto Mortayn; quia dicunt, quod omnes, qui tenent terras abuttantes super aquam illam, in ed piscantur pro voluntate sud usque filum aque, sicut illi de Grenely ex parte orientali, et illi de Stratsord ex parte occidentali. Dicunt etiam, quod quædam pars villæ de Stratsord est de seodo de Lancastria, abuttans se super aquam prædictam, et ipsi de seodo illo piscantur usque filum aque. Hugo in Misericordia.

And so it was accordingly agreed upon evidence, Tr. 2. Jac. B. R. Owen et Dunch. Vide 8 H. 7. 5. 22. Ass. 93. Rastall's Entries 666, et sapius alibi.

But special usage may alter that common presumption; for one man may have the river, and others the soil adjacent; or one man may have the river and soil thereof, and another the free or several fishing in that river.

If a fresh river between the lands of two lords or owners do insensibly gain on one or the other side; it is held, 22. Ass. 93. that the propriety continues as before in the river. But if it be done sensibly and suddenly, then the ownership of the soil remains according to the former bounds. As if the river running between the lands of A and B, leaves his course, and sensibly

fensibly makes his channel intirely in the lands of A, the whole river belongs to A; aqua cedit folo: and so it is, though if the alteration be by insensible degrees, but there be other known boundaries as stakes or extent of land. 22. Ast. pl. 93. And though the book make a question, whether it hold the same law in the case of the sea of the arms of it, yet certainly the law will be all one, as we shall have occasion to shew in the ensuing discourse.

But yet special custom may alter the case in great rivers. For instance, the river of Severn, which is a wild river, yet, by the common custom used below Gloucester bridge, it is the common boundary of the manors of either side, what course soever the river takes; viz. the filum aque is the common mark or boundary, though it borrow great quantities of land, sometimes of one side, sometimes of the other, and gives them to the opposite shore.

Though fresh rivers are in point of propriety as before prima facie of a private interest; yet as well fresh rivers as salt, or such as slow and reslow, may be under these two servitudes, or affected with them; viz. one of prerogative belonging to the king, and another of public interest, or belonging to the people in general.

Of these in the ensuing chapters.

C A P. II.

Of the right of prerogative in private or fresh rivers.

THE king by an ancient right of prerogative hath had a certain interest in many fresh rivers, even where the sea doth not slow or reslow, as well as in salt or armes of the sea; and those are these which follow.

Ist. A right of franchise or privilege, that no man may set up a common ferry for all passengers, without a prescription time out of mind, or a charter from the king. He may make a ferry for his own use or the use of his samily, but not for the common use of all the king's subjects passing that way; because it doth in consequent tend to a common charge, and is become a thing of public interest and use, and every man for his passage pays a toll, which is a common charge, and every ferry ought to be under a public regulation; viz. that it give attendance at due times, keep a boat in due order, and take but reasonable toll; for if he fail in these, he is sineable. And hence it is, that if a common bridge be broken, whereby there is no passage but by a boat or ferry, it hath been anciently practised in

the Exchequer to compel that ferryman, that ferries over people for profit without a charter from the king or a lawful prescription, to accompt for the benefit above his reasonable pains and charge. Communia Posche, 20. E. 3. in Scaceario. Vide Claus. 36. E. 3. m. 10. The bridge called Heckbeth bridge being in decay, neither was it well known who should repair it; the king grants a temporary ferry and certain particular rates for passengers, appoints the profits to be taken in the first place for defraying of the charge of the barge and bargemen; and if it can appear who is by tenure to repair it, then surplusage of the profits of the ferry to be answered to the king; and if that cannot be known, then charitatis intuitu the king allows it to the repair of the bridge.

And this, that is said in reference to a fresh or private river, holds place much more in a public river or arm of the sea; and therefore it need not be repeated when we come to that subject.

2dly. An interest, as I may call it, of pleasure or recreation. Before the statute of Magna Charta cap. 16. it was frequent for the king to put as well fresh as salt rivers in defense for his recreation; that is, to bar sishing or sowling in a river till the king had taken his pleasure or advantage of the writ or precept de defensione ripariæ, which anciently was directed to the sherist to prohibit riviation in any rivers in his bailwick. But by that statute it is enacted, quòd nullæ ripariæ defendantur de cætero, nisi illæ quæ suerunt in defense tempore Henrici regis avi nostri, et per eadem loca et per eosdem terminos, sicut esse consueverunt tempore suo.

After this statute the Ripariorum defensiones ran thus, as appears Claus. 20. H. 3. m. 3 dorso. Claus. 22. H. 3. m. 2. dorso, et sepius alibi.

Rex Vicecomiti Wigorniæ salutem. Præcipimus tibi, quòd sine dilatione clamari facias et sirmiter probiberi ex parte nostra, ut nullus de cætero eat ad riviandum in ripariis nostris in balliva tud, quæ in desenso suerunt tempore Henrici regis avi nostri; et scire facias omnibus de comitatu tuo, qui ab antiquo facere debent pontes ad riparias illas, quòd provideant sibi de pontibus illis, ita quòd prompti sint et parati in adventu nostro quando eis scire faciemus.

And thus it was written to most counties.

But because this left the country in a great uncertainty in the writs of 22 H. 3. so afterwards it mentioned some one particular river;

Et in alijs riparijs in balliva tua, quæ in defenso esse consueverunt tempore. Henrici regis avi nostri;

As Avon in Worcestershire, Bladen in Oxfordshire, Mules in Surrey, &c...

This hath been long disused; for it created a great trouble to the country, and little benefit or addition of pleasure to the king.

3d. An interest of jurisdiction; viz. in reference to common nuisances in or by rivers; as where the sewers were not kept, which gave the rise to the Commission of Sewers, as well for fresh rivers as for salt. Vide Stat. 23. H. 8. cap. 5. The Commission thereby enacted recites this part of the king's jurisdiction, viz.

"We therefore, for that by reason of our royal dignity and prerogative royal we are bound to provide for the safety and preservation of our realm," &c.

And another part of the king's jurisdiction in reformation of nuisances, is, to reform and punish nuisances in all rivers, whether fresh or falt, that are a common paffage, not only for ships and greater vessels, but also for smaller, as barges or boats; to reform the obstructions or annoyances that are therein to fuch common paffage: for as the common highways on the land are for the common land paffage, so these kind of rivers, whether fresh or falt, that bear boats or barges, are highways by water; and as the highways by land are called alta via regia, fo these publick rivers for publick passage are called fluvii regales, and baut streames le Roy; not in reference to the propriety of the river, but to the publick use; all things of publick safety and convenience being in a special manner under the king's care, supervision, and protection. And therefore the report in Sir John Davyes, of the piscary of Ban, mistakes the reason of those books, that call these streames le roy, as if they were so called in respect of propriety, as 19. Ass. 6. Dy. 11. for they are called fo, because they are of publick use, and under the king's special care and protection, whether the foil be his or not.

And this leads me to the third chapter.

C A P. III.

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Concerning public streams.

THERE be some streams or rivers, that are private not only in propriety or ownership, but also in use, as little streams and rivers that are not a common passage for the king's people. Again, there be other rivers, as well fresh as salt, that are of common or publick use for carriage of boats.

boats and lighters. And these, whether they are fresh or salt, whether they show and reslow or not, are prima facie publici juris, common highways for man or goods or both from one inland town to another. Thus the rivers of Wey, of Severn, of Thames, and divers others, as well above the bridges and ports as below, as well above the slowings of the sea as below, and as well where they are become to be of private propriety as in what parts they are of the king's propriety, are publick rivers juris publici. And therefore all nuisances and impediments of passages of boats and vessels, though in the private soil of any person, may be punished by indictments, and removed; and this was the reason of the statute of Magna Charta cap. 23.

Omnes kidelli deponantur per Thamisiam et Medwayam, et per totam Angliam nisi per costeram maris.

These kinds of nuisances were such, as hindered or obstructed the passage of boats, as wears, piles, choaking up the passage with filth, diverting of the river by cutts or trenches, decay of the banks, or the like.

And they were reformed,

Sometimes by indictments or presentments in the leets, sessions of the peace, over and terminer, or before justices of assize.

Oftentimes in the king's bench; as Hil. 50. E. 3. B. R. Rot. 23. for nuisances in the river of Trent; H. 23. E. 3. B. R. Rot. 61. in the river Ouse; H. 21. E 1. in the river Severn; Tr. 28. E. 3. Rot. 29. in the river Leigh; and generally in all other rivers within the bodies of counties, which had common passage of boats or barges, whether the water were fresh or salt, the king's or a subject's, Rot. Parliamenti 14. R. 2. n. 34. Mich. 36. E. 3. B. R. Rot. 65. Mich. 18, 19. E. 1. B. R. and infinite more.

Sometimes by special commission; as for the river of Leigh, 19. As. 6.

And sometimes by the parties, that were prejudiced by such nuisance, without any process of law.

More of this we shall see when we come to consider of common nuisances in havens and ports.

But if any person at his own charge makes his own private stream to be passable for boats or barges, either by making of locks or cutts, or drawing together other streams; and hereby that river, which was his own in point of propriety, become now capable of carriage of vessels; yet this seems not to make it juris publici, and he may pull it down again, or apply it to his own private use. For it is not hereby made to be juris publici, unless it were done at a common charge, or by a publick authority, or that by long continuance of time it hath been freely devoted to a publick use. And so it

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feems also to be, if he that makes such a new river or passage doth it by way of recompence or compensation for some other public stream that he hath stopped for his own conveniency; as in the case of the Abbot of St. Austin's Canterbury, mentioned in the Register. So likewise if he purchaseth the king's charter to take a reasonable toll for the passage of the king's subjects, and puts it in ure, these seem to be devoting and as it were consecrating of it to the common use. As he, that by an ad quod damnum, and licence thereupon obtained, changeth a way, and sets out another in his own land; this new way is thereupon become juris publici, as well as a way by prescription. For no man can take a settled or constant toll even in his own private land for a common passage without the king's licence.

C A P. IV.

Concerning the king's interest in salt waters, the sea and its arms, and the soil thereof: and sirst, of the right of sishing there.

THUS much concerning fresh waters or inland rivers, which, though they empty themselves mediately into the sea, are not called arms of the sea, either in respect of the distance or smallness of them.

We come now to confider the sea and its arms: and first, concerning the sea itself.

The fea is either that which lies within the body of a county or without.

That arm or branch of the sea which lies within the fauces terra, where a man may reasonably discerne between shore and shore, is or at least may be within the body of a county, and therefore within the jurisdiction of the sheriff or coroner. 8. E. 2. Corone 399.

The part of the sea which lies not within the body of a county, is called the main sea or ocean.

The narrow sea, adjoining to the coast of England, is part of the wast and demesses and dominions of the king of England, whether it lie within the body of any county or not.

This is abundantly proved by that learned treatise of Master Selden called Mare Clausum; and therefore I shall say nothing therein, but refer the reader thither.

In this sea the king of England hath a double right, viz. a right of jurisdiction which he ordinarily exerciseth by his admiral, and a right of propriety or ownership. The latter is that which I shall meddle with.

The

The king's right of propriety or ownership in the sea and soil thereof is evidenced principally in these things that follow.

Ist. The right of fishing in this sea and the creekes and armes thereof is originally lodged in the crown, as the right of depasturing is originally lodged in the owner of the wast whereof he is lord, or as the right of fishing belongs to him that is the owner of a private or inland river. I shall not give many instances of this, because they are abundantly done to my hand in the book I formerly cited.

Pat. 23. E. 1. m. 6. The king grants liberty to the Hollanders to fish in mari nostro prope Jernemuth.

Rot. Parliamenti 3. H. 5. pars 1. n. 33. The king by proclamation made a general inhibition of fishing upon the coasts of Ireland to the prejudice of the English. Desired to be recalled, but was not.

Rot. Parl. 8. H. 5. n. 6.

Item pry le Commons, que come nostre Seigneur le Roy et ses noble progeniteurs de tout temps ont estre Seigneurs de le mere, et ore per le grace de Dieu est si venus, que nostre Seigneur le Roy est Seigneur de costs de ambe parties de le mere d'ordeiner sur touts estrangers passants permy le dit mere tiel imposural oeps nostre Seigneur le Roy apprendre que a luy semble reasonable pur le salve gard del dit mere.

Responsio, " Le Roy s'avisera."

But though the king is the owner of this great wast, and as a consequent of his propriety hath the primary right of fishing in the sea and the creekes and armes thereof; yet the common people of England have regularly a liberty of fishing in the sea or creekes or armes thereof, as a publick common of piscary, and may not without injury to their right be restrained of it, unless in such places creeks or navigable rivers, where either the king or some particular subject hath gained a propriety exclusive of that common liberty.

Mich. 19. E. 3. B. R. Rot. 127. Lincoln. The commonalty of Grimsby impleaded the fishermen of Ole, which is within five miles of Grimsby, for lading and unlading their fish and other victuals at Ole;

Custumâ non solută, quæ est debita dietæ villæ Grimsby juxta cartas regis contra probibitionem regis.

The defendants plead,

Quòd ipsi sunt liberi tenentes in hamletto de Thrusco, qui est infra præcincum villæ de Ole, et quòd ipsi tanquam piscatores juxta costeram maris à tempore quo, &c. usi sunt piscari cum retibus et battellis suis, et pisces captos ad terram apud Thrusco et al bi in patria ibidem venditioni exponere, absque boc quòd blada vistualia bona aut mercimonia carcarunt aut discarcarunt aut venditioni exposuerunt. Ideo veniat jurata.

Vide Statutum 2. E. 6. cap. 6 5. El. cap. 5. Bratton, lib. 2. cap. 12. Jus piscandi omibus commune in portu et in suminibus. It must be taken to be rivers, that are arms of the sea, and primo intuitu; for de fatto there doth fall out in many ports and arms of the sea an exclusion of public sishing by prescription or custom.

IId. The next evidence of the king's right and propriety in the sea and the arms thereof is his right of propriety to

The shore; and

The Maritima Incrementa.

(1.) The shore is that ground that is between the ordinary high-water and low-water mark. This doth *primā facie* and of common right belong to the king, both in the shore of the sea and the shore of the arms of the sea.

And herein there will be these things examinable.

- Ist. What shall be said the shore, or littus maris.
- 2d. What shall be said an arm or creek of the sea.
- 3d. What evidence there is of the king's propriety thereof.
- 1. For the first of these it is certain, that that which the sea overslows, either at high-spring tides or at extraordinary tides, comes not as to this purpose under the denomination of littus maris; and consequently the king's title is not of that large extent, but only to land that is usually overslowed at ordinary tides. And so I have known it ruled in the Exchequer-chamber in the case of Vanhaesdanke on prosecution by information against Mr. Whiting, about 12. Car. 1. for lands in in the county of Norfolk, and accordingly ruled 15. Car. B. R. Sir Edward Heron's case, and Pasch. 17. Car. 2. in Scaccario, upon evidence between the Lady Wansford's Lesse and Stephens, in an ejectione sirmæ for the town of Cowes in the isse of Wight. That therefore I call the shore, that is between the common high-water and low-water mark, and no more.
- 2. For the fecond, that is called an arm of the sea where the sea flows and reslows, and so far only as the sea so flows and reslows; so that the river of Thames above Kingston and the river of Severn above Tewkesbury, &c. though there they are publick rivers, yet are not arms of the sea. But it seems, that, although the water be fresh at high water, yet the denomination of an arm of the sea continues, if it slow and reslow as in Thames above the bridge.
- 22. Ass. 93. Nota que chescun ew, que flow et reslow, est appel bras de mere cy santavint come il flow.
- 3. For the third, it is admitted, that de jure communi between the high-water and low-water mark doth prima facie belong to the king, 5. Rep. 107. Con-stable's

stable's case. Dy. 326. Although it is true, that such shore may and commonly is parcel of the manor adjacent, and so may be belonging to a subject, as shall be shewn, yet prima facie it is the king's.

And as the shore of the sea doth prima facie belong to the king, viz. between the ordinary high-water and low-water mark, so the shore of an arm of the sea between the high-water and low-water mark belongs prima facie to the king, though it may also belong to a subject, as shall be shewn in the next chapter.

In the case between the town of Newcastle and the prior of Tinmouth, 20. E. 1. which is afterwards, in the Second Part, chapter the 6th, more fully recited; one of the charges against the prior is, that he had built houses at Sheles upon the river of Tyne between the high-water and lowwater mark. The prior pleads that it was built on his own soil,

Ubi dominus rex nullum habet folum, neque liberum tenementum, eo quòd folum distæ domus et liberum tenementum extendit se usque ad filum aquæ Tyne, ultra terram suam siccam, et inter quod quidem filum aquæ et terram prædistam domus prædista habet piscariam suam liberam in longitudinem terræ ejusdem in eådem aquå.

The king's attorney replied,

Quòd, qualescumque manssunculæ ibidem fuerunt temporibus prædecessorum prioris, idem prior, qui nunc est, tempore suo sieri fecit ibidem 26 domus super solum quod domino regi esse debet, eo quòd sluxu et inundatione maris comprebenditur.

Afterwards judgment was given against the prior, but not in express termes for the soil, but implicitly. See the judgment afterwards in the Second Part, 6th chapter.

And consonant to this there was a decree Paschæ 8. Car. 1. in the Exchequer, entered in the book of Orders of that Term, fol. 66. whereby it was decreed, that the soil and ground lying between Wapping-wall and the river of Thames is parcel of the port of London; and therefore and for that the same lies between the high-water and low-water marks of the river of Thames, all the houses built between the Hermitage-wharse unto Dick. shore eastward, and between the old wall of Wapping-wall on the north and the river of Thames on the south, are decreed to the king; and the same were accordingly by commission seized into the king's hands.

The title of the bill or information was laid, viz. 1st. That the river of Thames flowed and reflowed. 2d. That consequently it was an arm of the sea. 3d. That it was the king's river. 4th. That it was the king's port.—And upon all these it was concluded, that the land between the high-water and low-water mark was the king's land, and accordingly decreed.

And

And this shall suffice for the king's right in the shore of the sea, or rivers that are arms of the sea, viz. the land lying between the high-water and the low-water mark at ordinary tides.

- (2.) The king hath a title to maritima incrementa, or increase of land by the sea; and this is of three kinds, viz. 1. Increase per projectionem vel alluvionem. 2. Increase per relictionem vel desertionem. 3. Per insulæ productionem.
- 1. The increase per alluvionem is, when the sea by casting up sand and earth doth by degrees increase the land, and shut itself out further than the ancient bounds went; and this is usual. The reason why this belongs to the crown is, because in truth the soil, where there is now dry land, was formerly part of the very fundus maris, and consequently belonged to the king. But indeed if such alluvion be so insensible, that it cannot be by any means found that the sea was there, idem est non esse et non apparere; the land thus increased belongs as a perquisite to the owner of the land adjacent.
- 2. The increase per relitionem, or recess of the sea. This doth de jure communi belong to the king; for as the sea is parcell of the wast or demesse, so of necessity the land that lies under it, and therefore it belongs to the king when lest by the sea; and so also it regularly holds in lands deserted by a river, that is an arm of the sea or a creek of the sea prima facie, especially if the creek or river be part of a port.

Clauf. 10. E. 3. m. 18. Upon an inquisition finding that half an acre in the suburbs of Canterbury,

Crevit in cursu ripæ Cantuariæ per alluvionem et diluvionem dittæ ripæ, this half acre was seized into the king's hands. But it is true, it was afterwards restored to the Abbot of St. Austin's; because by another inquisition it was found,

Quòd non est solum nostrum, nec accrevit per alluvionem et diluvionem dicta ripa, sed extitit solum abbatis, &c. à tempore cujus memoria, &c.

Car primi, Upon an information against Oldsworth and others for that which is now called Sutton Marsh, that 300 acres of land was reliatum per mare, and that the desendants had intruded into it; the desendants pleaded specially, and entitled themselves by prescription to the lands project by the sea; and upon a demurrer adjudged against them. That 1st, by the prescription or title made to lands project, which is jus alluvionis, no answer is given to the title of information for lands relict, for these were of several natures. 2d, It was held, that it lies not in prescription to claim lands relict per

mare;

mare; for so if the channel between us and France should dry up, a man might prescribe for it, which is unreasonable; for

Nibil prescribitur nisi quod possidetur.

But this hath some exceptions, besides these that follow in the ensuing chapter.

If a subject hath had by prescription the property of a certain tract, or creek, or navigable river, or arm of the sea, even while it is covered with water, by certain known metes or extents; this, though it should be relicted, the subject will have the propriety in the soil relicted. For he had it before, though covered with water; and although the sea is a fluid thing, yet the terra or solum subjectum is fixed; and by force of a clear and evident usage a subject may have the propriety of a private river; though the acquest of the former be more difficult, and requires a very good evidence to make it out, as shall be said in the ensuing chapter.

If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so that yet there be reasonable marks to continue the notice of it; or though the marks be defaced; yet if by situation and extent of quantity, and bounding upon the firm land, the same can be known, though the sea leave this land again, or it be by art or industry regained, the subject doth not lose his propriety: and accordingly it was held by Cooke and Foster, M. 7. Jac. C. B. though the inundation continue forty years.

If the mark remain or continue, or extent can reasonably be certain, the case is clear.—Vide Dy. 326.—22. Ass. 93. See for this a notable case in the case of an overslowing by the Thames, which is an arm of the sea, Rot. Parliamenti 8. E. 2. m. 23. pro Willielmo Burnello. Phillip Burnell, father of William, being seized of the manor of Hacchesham near Greenwich, died his heir within age during his minority.

Aqua Thamisse magnam partem terræ et prati manerij prædicti ac aliarum terrarum contiguarum superundavit.

The bishop of Bath and Wells, by agreement with the king, was to stop the breach at his own charges, and was to hold the land for seven years to reimburse his charges. This he did, and the land was regained, and the bishop held the land for his seven years, and three years over them. Burnell desired relief for his land in parliament against the Bishop. The answer was,

Sequatur versus episcopum ad communem legem; which would not have been, if the king had been intituled by the inundation.

P. 18.

P. 18. E. 2. Rot. 174. B. R. upon the like account a confiderable quantity of marsh ground, containing 100 acres, parcel of the manor of Stebunhith, was regained from the Thames, and enjoyed accordingly. I think it is the same that is now called Stepney Marsh, or at least some part of the manor now built upon and contiguous to the Thames. The record is worth the reading, but long.

Claus. 18. H. 3. m. 21. pro Villata de Shinberg in Gloucestershire.

Rex Vicecomiti, &c. Quia accepimus per inquisitionem, quam sieri precipimus, quòd illa pars terræ, quam utraque villata de Sbinbridge et Aure sibi vendicant, eo quòd aqua Sabrinæ eam occupavit super campum de Sbinberge versus campum de Aure, et postea processu temporis eam rejecit ad campum de Sbinberge, antequam sic rejesta esset per aquam Sabrinæ; de jure pertinuit ad villam de Sbinbridge, et in parte suit terra arabilis, et in parte pastura, ad eandem villam de Sbinbridge pertinens per divisam sossat, quod vocatur Hedgewood: precipimus tibi, quòd eidem villatæ de Sbinberge plenam seisinam de prædista parte terræ babere facias. Teste Rege apud Gloucesteriam.

The river of Severn had gained upon Shinbridge so much, that its channel ran over part of Shinbridge lands, and lost part thereof unto the other side, and then threw it back again to Shinberge. It shall not belong to Aure. Neither was it at all claimed by the king, though Severn in that place be

an arm of the fea. But it was restored to Shinberg as before.

But the truth is, that there the maritima incrementa of that river belong to the barons of Barclay, as shall be shewn. Yet the property of the soil was not lost to the owners that had it before.

And the truth is also, that river, which is a wild unruly river, and many times shifts its channel, especially in that flat between Shinberge and Aure, is the common boundary between the manors of either side, viz. the filum aqua, or middle of the stream. And this is the custom of the manors contiguous to that river from Gloucester down to Aure, which was not taken notice of in that record. Yet it serves for this purpose to shew, that the king gained not the propriety against the town by such inundation.

It is true, here were the old bounds or marks continuing, viz. the Hedge-wood. But suppose the inundation of the sea deface the marks and boundaries, yet if the certain extent or contents from the land not overflown can be evidenced, though the bounds be defaced, yet it shall be returned to the owner, according to those quantities and extents that it formerly had. Only if any man be at the charge of inning of it, it seems by a decree of Sewers he may hold it till he be reimbursed his charges, as was done

in the case of Burnell before alledged. But if it be freely left again by the reflux and recess of the sea, the owner may have his land as before, if he can make it out where and what it was; for he cannot lose his propriety of the soil, though it be for a time become part of the sea, and within the admiral jurisdiction while it so continues.

3. The third fort of maritime increase are islands arising de novo in the king's seas, or the king's armes thereof. These upon the same account and reason prima facie and of common right belong to the king; for they are part of that soil of the sea, that belonged before in point of propriety to the king: for when islands de novo arise, it is either by the recess or sinking of the water, or else by the exaggeration of sand and slubb, which in process of time grow sirm, land invironed with water; and thus some places have arisen, and their original recorded, as about Ravensend in Yorkshire.

And thus much of the king's right of propriety which he hath in the fea, and also prima facie and in common presumption in the ports and creeks and armes of the fea.

C A P. V.

The right which a subject may have in the creeks or armes of the sea, and how it may be acquired.

A LTHOUGH the king hath prima facie this right in the armes and creeks of the fea communi jure, and in common presumption, yet a subject may have such a right.

And this he may have two ways.

rst. By the king's charter or grant; and this is without question. The king may grant fishing within a creek of the sea, or in some known precinct that hath known bounds, though within the main sea. He may also grant that very interest itself, viz. a navigable river that is an arm of the sea, the water and soil thereof. He may also grant a manor cum littore maris eidem adjacente; and the shore itself will pass, though in gross and not parcel of the manor. He may also grant a manor or land contiguous to the sea, und cum maritimis incrementis, and that will pass that jus alluvionis, whereof before. Vide Carta Antiqua, G. 15. Grant 6. Johannis to the abbott de Bello loco, viz. alveum super quem abbatia fundata est à vado de Hartford cum succum maris in ascendendo et descendendo inter utramque ripam.

Vol. I. Vide

Vide ibidem, I. 17. Carta Willielmi primi abbati sancti Augustini de totă terră Estanore et totum littus usque medietatem aqua.

Vide ibidem, Carta Knuti monachis sancti Augustini de terrà insula Thanet, tam in terra quam in mari et littore.

Vide ibidem, F. 17. A grant by king William the first to the monks of Trinity, Canterbury, of divers liberties in their possessions in terra et in

Vide Carta Antiqua, O. 1. A grant by Edward the Confessor to the abbey of Hulm, videlicet, wreccum in mari et in littore maris et in portubus maris. Carta Antiqua, D. D. 24.

But it seems the grant of incrementa maritima will not pass lands that often happen to be relict by the sea; because that is not so properly maritimum incrementum. And besides, the soil itself under the water is actually the king's, and cannot pass from him by such an incertain grant as maritima incrementa; but it must pass a present interest.

But if the king will grant land adjacent to the sea und cum mille acris terræ aquâ maris coopertis eædem terræ secundum consuetudinem, &c. adjacentibus; such a grant, as it may be penned, will pass the soil itself; and if there shall be a recess of the sea leaving such a quantity of land, it will belong to the grantee.

2d. The second right is that which is acquired or acquirable to a subject by custom or prescription; and I think it very clear, that the subject may by custom and usage or prescription have the true propriety and interest of many of these several maritime interests, which we have before stated to be prima facie belonging to the king. I will go over them particularly, and set down which of these interests are acquirable by usage or prescription by a subject.

A subject may by prescription have the interest of fishing in an arm of the sea, in a creek or port of the sea, or in a certain precinct or extent lying within the sea; and these not only free fishing, but severall fishing.

Fishing may be of two kinds ordinarily, viz. the fishing with the net, which may be either as a liberty without the soil, or as a liberty arising by reason of and in concomitance with the soil, or interest or propriety of it; or otherwise it is a local fishing, that ariseth by and from the propriety of the soil. Such are gurgites, weares, fishing-places, borachia stachia, &c. which are the very soil itself, and so frequently agreed in our books. And such as these a subject may have by usage either in grosse, as many religious houses had; or as parcell of or appendant to their manors, as both corporations and others have had; and this pot only in navigable rivers and armes of

the sea, but in creeks and ports and havens, yea and in certain known limits in the open sea contiguous to the shore.

And these kinds of fishing are not only for small sea fish, as herrings, sprats, pilchers, &c. but for great fish, as salmons, which, though they are great fish, are not royal fish, as the report of Sir John Davies in the case of the fishing of Banne would intimate. And not only for smaller fish, and salmons, but even royal fish, as whale, sturgion, porposse, which, though they are royal fish, and prima facie and of common right do belong to the king, yet a subject may prescribe even for these as appurtenant to his manor, as is unquestionably agreed by our books.

Now for precedents touching such rights of fishing in the sea and armes and creeks thereof belonging by usage to subjects, the most whereof will appear to be by reason of the propriety of the very water and soil wherein the fishing is, and some of them even within the ports of the sea.

P. 4. E. 1. B. R. Surrey.—The prior of Stoke brings trespass for the fishing in aquâ de Sturmer against Hamon Clever.—The defendant justified, quòd piscavit in communi aquâ ipsius Hamonis ex parte comitatus Suffolchie, ubi ipse et antecessores sui semper solebant piscare.—The prior dicit, quòd Michael avus ipsius Hamonis dedit totum jus, quod dicebat se habere in piscaria maris de le Sturmer Deo et santto Johanni de Stoke, &c.

P. 34. E. 1. B. R. Rot. 14. Kancia.—Prior de Coningsbed implacitat abbatem de Furneys pro prostratione gurgitis in aquâ de Ulverstone. The desendant justified; because each end of the wear was fastened upon the abbot's land. The abbot replies, quòd Willielmus de Lancaster dominus de Kendal dedit prædecessori domûs suæ præditæ aquam et piscariam ex utrâque parte ejusdem quantum impetus maris sluit et resluit.

Vide Rastall's Entries, trespass in piscary, pl. 4. Prescription pur severall fishing in aqua maritima fluente et refluente in seisonabili tempore cum 7 stallis separatis separatis piscaria sixis pro retibus.

P. 35. E. 1. B. R. Rot. 18. Suffolchiæ.—Willielmus Braham implacitat Riccardum S. et 7 alios pro piscatione in separali piscaria sua apud Braham. Defendens dicit, quòd prædicta piscaria est quoddam brachium maris et communis piscaria eorundem et aliorum, et non separalis piscaria. Ideo veniat jurata.

Whereby it is admitted, though prima facie an arm of the sea be in point of propriety the king's, and prima facie it is common for every subject to fish there, yet a subject may have by usage a severall sishing there, exclusive of that common liberty which otherwise of common right belongs to all the king's subjects.

D 2

Trin. 10. E. 2. B. R. Rot. 83. Norfolchia. The abbot of St. Benedict Hulm impleads divers for fishing in riparia, que se extendit à ponte de Wroxam usque quandam lacum vocatam Blackdam .- Pending the suit the king's attorney came in, and alledged for the king, quod praditta riparia est brachium maris, que se extendit in salsum mare, et est riparia domini regis salsa fluens et refluens, ubi naves et battelli veniunt et applicant extra magnum mare carcati et discarcati quietè absque tolneto seu custuma alicui dando, et est communis piscaria quibuscumque; et dicit, quod presentatum fuit in ultimo itinere coram Solomone de Roffa et socijs suis justiciarijs itinerantibus in comitatu isto, quod prædecessor pradicti abbatis fecit purpresturam super dominum regem in riparia prædicta, gurgites plantando in eidem et appropriando sibi prædictam piscariam tenendo tanquam separalem; per quod consideratum fuit, quòd gurgites illæ amoverentur, et quòd pradicta aqua remaneret communis piscaria Et petit, quod non procedatur ad aliquam inquisitionem inde capiendam, quousque præfati justiciarij super recordo et processu pradictis certiorentur. Thereupon search is granted, and the record certified. And afterwards a procedendo was obtained; and iffue being joined; it was found for the abbot, and judgment and execution given against the defendants for the damages, viz. £.200.

Upon which record these things are observable.

1st. That de communi jure the right of such armes of the sea belongs to the king.

2d. That yet in such armes of the sea the subjects in general have prima facie a common of fishing, as in the main sea.

3d. That yet a subject may have a separate right of fishing, exclusive of the king and of the common right of the subject.

4th. That in this case the right of the abbot to have a several fishing was not a bare right of liberty or profit apprendre; but the right of the very water and soil itself, for he made weares in it.

Escatria, 12. E. 1. n. 1. The earls of Devon had not only the port of Toppesham, de quo infra; but the record tells us, that portus et piscaria et mariscus de Topsham spesiat Amicia comitissa Devon.

Mich. 13, 14. E. 1. B. R. rot. 10. The abbot of Tichfend impleaded the burgesses of Southampton, quòd diripuerunt gurgitem suam apud Cadeland. Burgenses respondent, quòd ipsa gurges levata suit ad nocumentum domini regis et villæ Southampton, et quòd batelli et naves impediuntur, quo minus venire non possunt ad portum villæ prædistæ. Juratores dicunt, quòd à tempore quo, &c. non suit ibi aliqua gurges, sed antiquitus solebant stare pali, per

quod credunt, quod tunc fuit prostrata gurges eadem occasione qua modo, eo quod fuit ad nocumentum transcuntium,

Upon which record these things are observable.

1st. That a subject may by prescription have a wear in the sea, and consequently have an interest below the low-water mark; for probably weares be such.

2dly, That, yet if it be a nuisance to the passage of ships, it may be abated.

7th Rep. 15. It appears, that the abbot of Abbotsbury before dissolution had not only a game of swans, but the fishing, yea and the soil of an arm or creek of the sea called a meere or sleete, in quam mare fluit et ressuit; and it came to the king by the dissolution of the monastery.

And in many confiderable armes of the sea that were navigable rivers, and slowed and reslowed with salt water, divers persons had weares and local sishing sluices. As for instance, in the river of Severn the earls of Lancaster had certain weares called Radley weares, part of his manor of Radley. Clause 10. E. 3. m. 29. The like for others in the river of Tese, Patentes 32. E. 3. pars 1. m. 15. dorso in Twede, sines z. E. 3. m. 1. in Trent. Pat. 18. E. 2. pars 1. m. 3. dorso Pat. 43. H. 3. m. dorso in Severn. Pat 2. E. 4. pars 3. m. 15. dorso. Pat. 32. E. 3. pars 2. m. 15. dorso in Ose. Pat. 12. E. 2. pars 1. m. 3.

Trin. 50. E. 3. B. R. rot. 2. Essex. Walterius silius Walteri monstrat domino regi, quòd cùm prscaria vocata le Reysand ab antiquo ut parcella manerij sui de Burnham appendebat, dominus rex per cartam suam eam concessit durante minore atate sua cuidam Bartholomeo Stigoune, qui prædictam piscariam detinet ad præjudicium et exhæredationem dittæ Walteri. And thereupon a scire facias awarded. The defendant prayed aid of the king; and after a procedendo they plead to issue, and the jury sind, that dicta piscaria est parcella manerij prædicti. Ideo consideratum est, quòd prædicta piscaria, cum gurgitibus eidem pertinentibus, dicto Waltero liberentur.

Infinite more of this kind might be produced. I shall add no more here; but in the subsequent parts of this and the next chapter some other instances of this nature will occur, which be applicable to the prescription of the right of sishing in navigable rivers; and I have added the more, because there are certain glances and intimations in the case of the piscary of Banne, in Sir John Davies's reports, as if the sishing in these kinds of royal rivers, were not acquirable but by special charter, which is certainly untrue; for they are acquirable by prescription or usage, as well as royal sish may be.

It is true, that by the statute of Magna Carta, cap. 23. Omnes kidelli deponantur de cetero penitus per Thamisiam et Medwayam per totam Angliam, nist per costeram maris.

And this statute was seconded with others that were more effectual, viz.

25. E. 3. cap. 3. 1. H. 4. 12. 12. E. 4. cap. 7.

And by force of these statutes, we ares, that were prejudicial to the passage of vessels, were to be pulled down; and accordingly it was done in many places. But that did no way disaffirm the propriety, but only remove the annoyance, which, as before is shewn, was not to be allowed in an inland river,

if it be a common passage.

The exception of weares upon the sea-coasts, and likewise frequent examples, some whereof are before mentioned, make it appear, that there might be such private interests not only in point of liberty, but in point of propriety, on the fea-coast and below the low-water mark; for such were regularly all weares. But as by the statutes of 25. E. 3. cap. 4.-45. E. 3. cap. 2.-1. H. 4. 12.-4. H. 4. cap. 11. and other statutes, the erecting of new weares and inhancing of old is provided against in navigable rivers; and by other statutes particular provision is made against weares new or old erected in particular ports (as in the port of Newcastle, by the statute of the 21. H. 1. cap. 18.; in the port of Southampton, by the statutes of 11. H. 7. cap. 5. 14. H. 8. cap. 13.; in the rivers of Ouse and Humber, by the statute of 23 H. 8. cap. 18.; in the river and port of Exeter, by the statute of 31. H. 8. cap. 4.; in the river of Thames, by the statutes of 4. H. 7. cap. 15. 27. H. 8. cap. 18. 5. Jac. cap. 20. and divers others); fo by the statute of 3. Jac. cap. 12. all new weares erected upon the seashore, or in any haven harbour or creek, or within five miles of the mouth of any haven or creek, are prohibited under a penalty. But in all these statutes, though they prohibit the thing, yet they do admit, that there may be such an interest lodged in a subject, not only in navigable rivers, but even in the ports of the fea itself contiguous to the shore, though below the lowwater mark, whereby a fubject may not only have a liberty but also a right or propriety of foil. But yet this, that I have faid, must be taken with this allay, which I have in part premised.

occasion a common annoyance to passage of ships or boats; for that is prohibited by the common law, and these several statutes before mentioned, viz. erecting new weares, inhancing old, fixing of pikes or stakes, and the like, in order to sishing: for the jus privatum, that is acquired to the subject either by patent or prescription, must not prejudice the jus publicum, where-

with public rivers or armes of the sea are affected for public use.

2d. That the fishing, that a subject hath in this or any other private or public river, or creek fresh or salt, is subject to the laws for the confervation of fish and fry, which are many.

And this gives me an occasion to divert to the examination of those commissions, that have been granted in common rivers, commonly called commissions of conservancy or water-bailists; which commissions have of late time especially been granted in all the great rivers in England, and under which the patentees have exercised a jurisdiction irregularly enough and to the damage of the people, and under the disguise of a publick good have filled their own purses with the money exacted from the people. Therefore touching their office,

rist. The office of a water-baillie or scrutator is a bare ministerial officer, which the king doth or may appoint in those rivers or places that are his in franchise or interest. And his business was, to look to the king's rights, as his wrecks, his stoatsan, jetsan, water-strays, royal sishes. And he had no jurisdiction at all qua talis; but his office was only ministeriall, to receive and account for the casualties belonging to the king upon public or great rivers, which did or in common presumption might belong to the crown. Such was that office of searcher, scrutator, or baillie of the river of Severn usque ad pontem Wigornia: Pat. 27. H. 6. parte 2. m. 20. Pat. 8. E. 4. parte 1. m. 22.

2d. The office of conservator of rivers and fish in rivers; and of these patents of conservancy we find mention in the statute 1. El. cap. 17. And by a grant made to the city of London, and consirmed by the parliament of 17. R. 2. cap. 9. the conservancy of the river of Thames from Stainsbridge down to Medway is granted to the mayor of London.

This office of conservancy is of two kinds, or rather there are or may be

two branches thereof.

on the statute of 1. H. 4. cap. 12. whereby it is enacted, that there shall be commissions granted to survey and keep the waters and great rivers, and to correct and amend the defaults. And this for Thames is annexed to the mayor of London also by the statutes of 4. H. 7. cap. 15. 27. H. 8. cap. 18.

2d. The conservancy in order to fishing. And this is that which is mentioned in the statute of 1. Eliz. cap. 17. And this is grounded upon the stat. of Westminster 2. cap. 47. which enacted, That the waters of Humber, Owse, Trent, Dove, Aire, Darwent, Wherf, Niddiore, Swale, Tese, Tyne, Eden, et omnes alia aqua in regno, in quibus salmones capiuntur,

ponantur

ponantur in defenso, &c. Et in partibus ubi bujusmodi ripariæ fuerint, assignentur conservatores istius statuti, qui ad boc jurati sæpius videant et inquirant de bujusmodi transgressoribus. Et in prima transgressione puniantur per combustionem retium, &c. By the stat. 13. R. 2. cap. 19. the former statute is consirmed, and the river of Thames added; and the rivers of Lone, Wyre, Merse and Ribbell, and all other waters in the county of Lancaster be put in defence as to the taking of salmons, &c. and in parts where such rivers are, there shall be assigned and sworn good and sufficient conservators of this statute, as of the statute of Westminster.

But neither of these statutes extended to any rivers but such wherein salmon be. And inasmuch as such a commission could not be without the warrant of an act of parliament, as is observed truly by my Lord Coke upon the statute of Westminster 2. cap. 47. consequently their commission cannot extend further than that act warrants, viz. to none but to those that are particularly named, or at least wherein salmon are.

By the statute of 17. R. 2. cap. 9. the justices of the peace are appointed conservators of these statutes, except only as to the conservancy of the river of Thames and Medway annexed to the mayor of London.

By the stati of 1. Eliz. cap. 17. there is a farther and more extensive provision against the destruction of other fish as well as salmon; and it limits, that the lord admiral, the mayor of London, lords of leets, &c. and all other persons, &c. which by grant or other lawful ways or means lawfully have the conservation or preservation of any rivers, shall have power within the precincts of their lawful jurisdiction to inquire of, by the oaths of twelve men, and to hear and determine such offences.

This indeed doth enlarge the power of these conservators in respect of the offences, but not in respect of the limit of their jurisdiction.

Upon all this it follows,

1st. That these commissioners of conservancy have no power in referrence to sishing, but in such places where salmons are or the rivers mentioned in the acts, though in those rivers they have jurisdiction as to other sish as well as salmon; and that the conservators have no power except in referrence to nuisances in common or public rivers, and not in private nuisances between party and party.

2d. Consequently, not in the small rivers that fall into those rivers; for such small rivers as they, are not named in the acts of Westminster 2. nor 13. R. 2. and they have not any salmons in them, and so not within

their jurisdiction.

1.3d. But yet in those rivers particularly named in the statutes of West-minster 2. and 13. R. 2. or in such rivers where salmons are, they have power to inquire of all offences contrary to the statute of 1. Eliz. because committed within the precinct of their jurisdiction.

4th. But then they must not convict nor fine men barely upon a prefentment without a tryall; for such conviction without tryall is against law in any case, but a leete or swanmote court.

And therefore all those offences that are against the statute of 1. Eliz. within small rivers, are only punishable by the leete, or by the justices of the peace at their sessions, who are generall conservators by the statute of 17. R. 2. cap. 9. and not before these conservators by commission, except as to the offences in Thames, which are inquirable by the mayor of London.

And thus much by the way concerning conservatorships and water-baillies; and also concerning the right of fishing in the sea or armes thereof belonging to a subject, either by grant or prescription, either as a liberty or in respect of ownership of soil.

C A P. VI.

Concerning the ownership or propriety which a subject may have in the sea-shore and maritime increments, &c.

Come now to those other parts of propriety which a subject may have by prescription or usage, viz. the sea-shore and maritime increases; which, though we have before stated to belong prima facie to the king, yet they may belong to the subject in point of propriety, not only by charter or grant, whereof there can be but little doubt, but also by prescription or usage.

I. The shoar of the sea.

There feem to be three forts of shoars, or littora marina, according to the various tides, viz.

(1st.) The high spring tides, which are the fluxes of the sea at those tides that happen at the two equinoxials; and certainly this doth not de jure communi belong to the crown. For such spring tides many times overslow ancient meadows and salt marshes, which yet unquestionably belong to the subject. And this is admitted of all hands.

(2d.) The spring tides, which happen twice every month at full and change of the moon; and the shoar in question is by some opinion not denominated by these tides neither, but the lands overflowed with these fluxes ordinarily belong to the subject prima facie, unless the king hath a prescription to the contrary. And the reason seems to be, because for the most part the lands covered with these fluxes are dry and maniorable; for at other tides the fea doth not cover them; and therefore touching thefe shoars some hold, that common right speaks for the subject, unless there be an usage to entitle the crown; for this is not properly littus maris. And therefore it hath been held, that where the king makes his title to land as littus maris, or parcella littoris marini, it is not fufficient for him to make it appear to be overflowed at spring tides of this kind. P. 8. Car. 1. in Camerá Scaccarii, in the case of Vanhesdanke for lands in Norfolk; and so I have heard it was held, P. 15. Car. B. R. Sir Edw. Heron's case, & Tr. 17. Car. 2. in the case of the lady Wandesford, for a town called the Cowes in. the Me of Wight, in Scaccario.

(3d.) Ordinary tides, or nepe tides, which happen between the full and change of the moon; and this is that which is properly littus maris, fometimes called marettum, fometimes warettum. And touching this kind of shoar, viz. that which is covered by the ordinary flux of the sea, is the

bufiness of our present enquiry.

1st. This may belong to a subject. The statute of 7. Jac. cap. 18. supposeth it; for it provides, that those of Cornwall and Devon may fetche sea-sand for the bettering of their lands, and shall not be hindered by those that have their lands adjoining to the sea-coasts, which appears by the statute they could not formerly. Vide Carta Antiqua D. D. n. 24. the charter of Alan de Percy to the monks of Whitby, and the bounds thereof, viz. totam marinam à portà de Whitby usque Blowick, &c. et usque Terdiso, et usque in mare, et per marinam in Whitby, consirmed by king Henry I. And the bounds of that abbey's possessions take in many creeks of the sea, yet are given by a subject, viz. Derwent, Muse, Ese, &c.

2d. It may not only belong to a subject in gross, which possibly may suppose a grant before time of memory, but it may be parcell of a manor. And thus it is agreed 5. Reports, 107. in fir Henry Constable's case, and the book of 5. E. 3. 3. cited accordingly. And according to this was the resolution cited Dyer 316. to be between Hammond and Digges, P. 17. Eliz. And accordingly it was decreed in the Exchequer-chamber, P. 16. Canimiter l'Attorney Generall ex sir Samuel Roll, sir Richard Buller, and

fir Thomas Arundell, per omnes barones. And the evidences to prove this fact are commonly these: constant and usual setching gravel and sea-weed and sea-sand between the high-water and low-water mark, and licensing others so to do; inclosing and imbanking against the sea, and enjoyment of what is so inned; enjoyment of wrecks happening upon the sand; presentment and punishment of purprestures there in the court of a manor; and such like.

And as it may be parcell of a manor, so it may be parcell of a vill or parish; and the evidence for that will be usuall perambulations, common reputation, known metes and divisions, and the like. And upon this account the parson of Sutton about 14. Car. had a verdict for the tithes of Sutton-Marsh in Lincolnshire, upon a long and a great evidence; though it appeared, that within time of memory it was the meer shoar of the sea covered at ordinary tides, and without the old sea-bank.

3d. It may not only be parcell of a manor, but de falle it many times is fo; and perchance it is parcell almost of all such manors as by prescription have royal fish or wrecks of the sea within their manor. For, for the most part, wrecks and royal fish are not, nor indeed cannot be well left above the high-water mark, unless it be at such extraordinary tides as overflow the land: but these are perquisites, which happen between the high-water and low-water mark; for the fea withdrawing at the ebb leaves the wrecks upon the shoar, and also those greater fish which come under the denomination of royal fish. He therefore that hath wreck of the sea or royal fifth by prescription infra manerium, it is a great presumption, that the shoar is part of the manor, as otherwise he could not have them. And consonant to this is the pleading of Sir Henry Nevill's case, 5. E. 3. 3. and Raftall's Entries 684. transcribed out of the record M. 14. E. 1. Rot. 422. where an abbot, prescribing for wreck belonging to his manor, doth it in this form: Ipseque et omnes prædecessores sui abbates monasterii prædicti et domini ejusdem manerii, per totum tempus prædictum, babuerunt, et babere consueverunt, ratione manerii pradicti, omnimodo bona wreccata super mare et ut wreccum super terram projecta per costeram maris in quodam loco ubi mare secundum curfum fuum pro tempore fluxit et refluxit, à quodam loco vocato M. in parochia de L. &c. And in the following plea, an abbot prescribes to have wreccum maris infra præcinctum manerii sive dominii sui projectum et flotesan maris infra præcinctum manerii deveniens, quòdque prædictum dolium vini fuit wreccum maris per mare projectum super littus maris apud S. infra præcinctum manerii sive dominii

And with this agrees the Register 102. Yet I find the earl of Cornwall had wreccum maris per comitatum Cornubie; and thereupon being questioned for wreck, adjudged, quod eat fine die. P. 14. E. 1. minus B. R. Rot. 6. Cornubia. But that was in a contest between the king and him; for possibly the inferior lords might have it by usage against the earl.

Thus much shall suffice concerning the shoar or space between the highwater and low-water mark, which may belong to a subject and be parcell of his

manor.

II. Let us now come to the maritima incrementa, viz.

Alluvio maris; Recessus maris; et Insula maris.

the projection of the sea casting up and adding sand and slubb to the adjoining land, whereby it is increased, and for the most part by insensible degrees, Bracton, lib. 2. cap. 2. writes thus: Item quod per alluvionem agro tuo sumen adjecit, jure gentium tibi acquiritur. Est autem alluvio latens incrementum. Et per alluvionem adjici dicitur, quod ita paulatim adjicitur, quòd intelligere non possis quo momento temporis adjiciatur, &c. Si autem non sit latens incrementum, contrarium erit, ut vis sluminis partem aliquam en tuo pradio detraxit, et vicini pradio appulit, certum est eam tuum permanere, &c. But Bracton sollows the civil law in this and some other sollowing places. And yet even according to this, the common law doth regularly hold at this day between party and party. But it is doubted in case of an arm of the sea, 22. Ass. 93.

This jus alluvionis, as I have before faid, is de jure communi by the law of England the king's, viz. if by any marks or measures it can be known what is so gained; for if the gain be so insensible and indiscernible by any limits or marks that it cannot be known, idem of non esse et non apparere, as well in maritime increases as in the increases by inland rivers.

But yet custom may in this case give this jus alluvionis to the land where-

This is made out very plainly by these ensuing records.

Communia Frin. 43. E. 3. Rot. 13. in Scaceario, which is that very record which is cited by Dyer 326. out of the book of Ramsey.—Process went out against the abbot of Ramsey ad oftendendam causam, quare 60 acræmarisei in manum regis non debent sestii, quas abbas appropriavit sibi et domui sua sine licentid regis, super quadam generali commissione de terris à rege concelatis

et detentis... Abbas respondit, quòd ipse tenet manerium de Brancaster, quod scituatun est ejunta mare, et quod est abidem quidam mariscus, qui aliquando per in sluxus maris minoratur, aliquando per dessuus maris augetur, absque boc quòd appropriavit sibi prout per prasentationem pradictam supponitur. And issue joined and verdict given for the abbot by Nisi prius before one of the barons. Et judicium quòd eat sine die, salvo semper jure regis.

Though there were a verdict upon the iffue, whether appropriavit or not, yet it is plain, that the title stood upon that which the abbot alledged by way of increment. And note, here is no custom at all alledged; but it seems he relied upon the common right of his case, as that he suffered the loss so he should enjoy the benefit, even by the bare common law in case of alluvion.

M. 23. E. 3. B. R. Rot. 26. Lincolnia.—The abbot of Peterborough was questioned at the king's suit for acquiring 30 acras marisci in Gosberkile, licentia regis non obtenta. The abbot pleaded, quòd per consuetudinem patriæ est et à tempore quo, &c. extitit usurpatum, quòd omnes et singuli domini, maneria terras seu tenementa super costeram maris habentes, particulariter babebunt marettum et sabulonem per suxus et ressurus maris secundum majus et minus prope tenementa sua projecta. Et dicit, quòd ipse babet quoddam manerium in eadem villa, unde plures terræ sunt adjacentes costeræ maris, et sic babet per suxus et ressurus maris circiter 300 acras maretti terras suas adjacentes, et per temporis incrementum secundum patriæ consuetudinem; et absque boc quòd ipse perquisivit, &c. And upon issue joined, it depended many years before the issue was tried. But asterwards, P. 41. E. 3. B. R. Rot. 28. Lincolnia, Rex, viz. given, quòd, secundum consuetudinem patriæ, domini maneriorum prope mare adjacentium, babebunt marettum et sabulonem per sluxus et ressurus maris per temporis incrementum ad terras suas costeræ maris adjacentes projesta, &c. Ideo abbas sine die.

Observe,

rft, Here is custom laid, and he relies not barely upon the case without it.

2d. In this case it was per incrementum temporis and per mare projecta. It is not a sudden reliction or recessus maris, as I shall have occasion to mention hereafter. And though there is no alluvio without some kind of reliction, for the sea shuts out itself; yet the denomination is taken from that which predominates. It is an acquest per projectionem or alluvionem, not per recessum or relictionem.

3d. That such an acquisition lies in custom and prescription; and it hath a reasonable intendment, because these secret and gradual increases of the land adjoining cedunt solo tanquam majus principali; and so by custom it becomes as a perquisite to the land, as it doth in all cases of this nature by the civil law.

2. Now as touching the accession of land per recession maris, or a sudden retreat of the sea, such there have been in many ages. Sometimes the ocean, especially the narrow sea lying between us and France and the Netherlands, leaves the English shore in a great considerable measure; possibly by reason of some superundation on the other eastern shore, or by some other reason we know not.

This accession of land, in this eminent and sudden manner by the recess of the sea, doth not come under the former title of alluvio, or increase per projectionem; and therefore, if an information of an intrusion be laid for so much land relict per mare, it is no good defence against the king to make title per consuetudinem patrix to the marettum, or sabulonem per mare projectum; for it is an acquest of another nature. And this was accordingly adjudged, H. 12. Car. Rot. 48. in the case of the king against Oldsworth and others for Sutton Marsh, in Scaccario. And in that case it was likewise held and adjudged, that lands acquired per relictionem maris are not prescribable, as part of a manor or as belonging to the subject; for that were to prescribe, in effect, that the narrow seas to the coasts of France or Denmark were part of a manor. In that case the information plea and judgment were in substance as followeth, viz.

Qued cum 7000 acræ marisci salsi vocati Sutton Marsh, jacentes et existentes junta Sutton Long in comitatu pradicto, videlicet, inter Sutton Long et mare ad refluxum ejusdem, fuissent parcella littoris marini, ac ad refluxus maris naturalis et ordinarios aquis salsis et marinis inundatæ: cumque eædem 7000 acræ marisci falfi nuper à mari, unde inundate fuissent, fuissent relitte. Then the information fets forth a grant by king James under the great feal to Peter Ashton and others, and a regrant by them by deed inrolled to the king, and that Michael Oldsworth, &c. intruded. The defendant Oldsworth came in; and as to part pleaded as tenant, viz. quod bene et verum eft, quod preditte 7000 acræ marisci salsi vocati Sutton Marsh, jacentes et existentes juxta Sutton Long, viz. inter Sutton Long et mare ad refluxum ejusdem, fuerunt parcella littoris marini, et ad refluxus maris naturales et ordinarios aquis salsis inundatæ et à mari relieue prout per informationem. But he further faith, the king was feized in right of the duchy of the manor of Sutton, et quod plures terra disti manerii ante relictionem dista costera maris adjacebant; et quod consuetudo patriæ est et à tempore quo, &c. quod domini maneriorum, terrarum, seu tenementorum super costeram maris adjacentium, particulariter babebunt marettum et sabulonem per fluxum et refluxum maris secundum majus et minus prope terras seu tenementa sua projectum sive relictum : quòdque et pradicte 7000 acre marifet

et refluxus maris relide fuerunt à mari, et projette ad terram predictam parcellam manerii de Sutton predicti, ratione cujus relicionis predicte dominus
ren fuit seisitus, &c. de predictis 7000 acris in jure ducatus, &c. And then
he entitles himself by a grant under the duchy seal, and traverseth what
he had not confessed. Upon this there was a demurrer and judgment for
the king, upon solemn argument; and principally upon this reason, that
custom cannot intitle the subject to relicted lands, or make it part of a
manor: and it differed from the case of the abbot of Peterborough before
cited; for there it was only projett, but here relict is added to the plea,
that it might answer the information; though the plea in the abbot of
Peterborough's case was the precedent by which the plea was drawn,
and with which it agreed, saving that addition of relict.

And yet the true reason of it is, because the soil under the water must needs be of the same propriety as it is when it is covered with water. If the soil of the sea, while it is covered with water, be the king's, it cannot become the subject's because the water hath left it. But in the case of alluvio maris, it is otherwise; because the accession and addition of the land by the sea to the dry land gradually is a kind of perquisite, and an accession to the land; and therefore, in case of private rivers, it seems by the very course of the common law, such a gradual increase cedit solo adjacenti; and though it may be doubtfull whether it be so ex jure communi in case of the king, yet doubtless it gives a reasonableness and facility for such right of alluvia to be acquired by custom; for though in every acquest per alluvianem there be a reliction or rather exclusion of the sea, yet it is not a recess of the sea, nor properly a reliction.

But this is to be carried along with us in the case of recessus or reliction maris vel brachii ejusdem; that where the land, as it stood covered with water, did by particular usage or prescription belong to a subject, there the recessus maris, so far as the subject's particular interest went while it was covered with water, so far the recessus maris vel brachii ejusdem belongs to the same subject.

The king of England hath the propriety as well as the jurisdiction of the narrow seas; for he is in a capacity of acquiring the narrow and adjacent sea to his dominion by a kind of possession which is not compatible to a subject; and accordingly regularly the king hath that propriety in the sea: but a subject hath not nor indeed cannot have that property in the sea, through a whole tract of it, that the king hath; because without a regular power he cannot possibly possess it. But though a subject cannot acquire the interest of the narrow seas, yet he may by usage and prescription acquire an interest in so much of the sea as he may reasonably possess, viz. of a districtus maris,

a place in the sea between such points, or a particular part contiguous to the shore, or of a port or creek or arm of the sea. These may be possessed by a subject, and prescribed in point of interest both of the water, and the soil itself covered with the water within such a precinct; for these are maniorable, and may be entirely possessed by a subject.

The civilians tell us truly, nibil prescribitur nist quod possibetur. The king may prescribe the propriety of the narrow seas, because he may posses them by his navies and power. A subject cannot. But a subject may posses a navigable river, or creek or arm of the sea; because these may lie within the

extent of his possession and acquest.

The confequence of this is; that the foil relinquished by such armes of the sea, ports, or creeks; nay, though they should be wholly dried or stopped up; yet such soil would belong to the owner or proprietor of that arm of the sea, or river, or creek: for here is not any new acquest by the reliction; but the soil covered with water was the subject's before, and also the water itself that covered it; and it is so now that it is dried up, or hath relin-

quished his channel or part of it.

And such an acquest of a propriety in an arm or creek of the sea may be as well within the precinct of a port, as without; and that, though the king or some other subject hath the port in point of franchise or privilege. For though the soil of all creeks and navigable rivers, especially within ports, do prima facie belong to the king in point of propriety as well as in point of franchise, yet the subject may have so great and clear a possession of the soil lying under the water of that port, that it may belong to a subject in point of interest or propriety of the soil, though he have or have not the port in point of franchise: and consequently, if the sea should relinquish the channell or creek or arm of the sea within such a port, it might and would belong to that subject, that had the propriety of the soil and water before it were so relicted.

And this is an exception out of that generality, possibly, that terra relista per mare may not be prescribed. But a certain creek, arm of the sea, or districtus maris, may be prescribed in point of interest; and, by way of consequence or concomitance, the land relicted there, according to the extent of such a precinct as was so prescribed, will belong to the former owner of such districtus maris. But otherwise it would be, if such prescription before the reliction extended only to a liberty, or prosit apprendre, or jurisdiction only within that precinct; as liberty of free sishing, admirall jurisdiction, or the jurisdiction of a leet or hundred or other court; for such may extend

to the track of the few as he range prefendely goods, was of the second range

to an arm of the sea, as appears by 8. E. 2. Gorone; for these are not any acquests of the interest of the water and soil, but leave it as it found it.

Therefore the discovery of the extent of the prescription or usage, whether it extend to the soil or not, rests upon such evidences of fact as may justly satisfy the court and jury concerning the interest of the soil.

That which I have to fay concerning creeks or havens or armes of the fea, and the propriety of them, will be contained in these following affertious.

That a subject may, by usage or prescription, be owner or proprietor of such an arm of the sea, creek, or particular portion of the sea contiguous to the shore, as is not a public port or haven; and consequently, if that part be left dry per recessum vel obstructionem maris, that will belong to that subject, that had that antecedent propriety when it was covered with water.

This will appear by the review of those cases that are in the precedent chapter concerning the right of fishing in the sea, many of which instances make it appear, that there may be a right of propriety in the soil aqua cooperta, and the right of fishing resulting not as a profit apprendre, but upon the very right of the soil itself. And those instances, that follow in this chapter, will farther make out the propriety of the soil of such places as these compatible to a subject.

2d, That a subject having a port of the sea may have, and indeed in common experience and presumption hath, the very soil covered with the water; for though it is true, the franchise of a port is a differing thing from the propriety of the soil of a port, and so the franchise of a port may be in a subject, and the propriety of the soil may be in the king or in some other, yet in ordinary usage and presumption they go together.

If the king at this day grant portum maris de S. the king having the port in point of interest as well as in point of franchise, it may be doubtfull, whether at this day it carries the soil, or only the franchise; because it is not to be taken by implication. But surely, if it were an ancient grant, and usage had gone along with it, that the grantee held also the soil, this grant might be effectual to pass both; for both are included in it.

And so if by prescription or custom a man hath portum maris de S. in ordinary presumption he hath not only the franchise, but the very water and soil within the port; for a portus maris is quid aggregatum, as a manor; and such a prescription may carry the soil as well as the franchise; and though this doth not always hold, yet most times it doth.

Escaetria 12. E. 1. n. 1. Portus et piscaria et mariscus de Topsham spectant ad Amiciam comitissam. Devon. She had not only the franchise of the port, but the soil of the port, and the fishing and salt-marsh adjoining. Vide infra, when we come to the rights of ports.

And vide infra, par. 2. cap. 4. the case of the port of Plymouth, parcell of the manor of Trematon, wherein it will appear, that a subject, as he may be owner of a port in point of franchise, so he may be owner of the very soil of the haven in point of propriety. And see in the same chapter concerning the port of Poole. The earl of Surrey was owner of it in point of propriety as well as franchise, and had the anchorage of ships there, which seems to be ordinarily a perquisite in respect to the soil.

3d, That a man who is not owner of a port in point of franchise, but the franchise of the port belonging to the king, yet such a subject may by usage have the very propriety of a creek or arm of the sea parcell of that port, and of the soil thereof; and may have upon that account the increases of land that happen by the recess of the water of that arm of the sea.

Register, 252. The prior of Christ Church Cantuariæ petitions the king, quòd cùm quædam antiqua trenchea, quæ se ducit à brachio maris vocata A. versus villam de B. quæ est in solo ipsorum prioris et conventus, per sabulones et arenam maris jam de novo taliter sit obstructa, quòd naves per trencheam illam usque ad dictam villam de B. venire nequeunt, ut solebant; et quædam alia trenchea, ducens ab eodem brachio maris usque ad eandem villam de B. jam vi maritima facta existet, per quam naves et batelli à mari usque ad villam illam commodé et sine impedimento poterunt transire. An ad quod damnum issues to inquire, si sit ad damnum vel præjudicium nostri aut aliorum, seu nocumentim dicta villæ de B. si eis licentiam concedamus, quòd ipsi dictam antiquam trencheam omnino obstruere et commodum suum inde facere possint.

Here the common passage for ships to a town admitted in point of propriety to belong to the prior, and that they may make profit of the soil being stopt up.

In Scaccario Car. upon the profecution of Sir Sackville Crow, there was an information against Mr. John Smith, farmer of the lord Barelay, fetting forth, that the river of Severn was an arm of the sea, slowing and reslowing with salt water, and was part of the ports of Gloucester and Bristol, and that the river had left about 300 acres of ground near Shinbridge, and therefore they belonged to the king by his prerogative.

Upon not guilty pleaded, the tryall was at the exchequer bar, by a very fubfiantial jury of gentry and others of great value.

Upon the evidence it did appear by unquestionable proof, that Severn in the place in question was an arm of the sea, slowed and reslowed with salt water, was within and part of the ports of Bristol and Gloucester, and that within time of memory these were lands newly gained and inned from the Severn; and that the very channell of the river did within time of memory run in that very place where the land-in question lies; and that the Severn

had deferted it, and the channell did then run above a mile towards the west, the addition you that the channels did then run above a mile towards the

On the other fide, the defendant claiming under the title of the lord Barclay alledged these matters, whereupon to ground his defence, viz.

ist. That the barons of Barclay were from the time of Henry the second owners of the great manor of Barclay.

2d. That the river of the Severn ufque filum aque was time out of memory parcell of that manor.

3d. That by the conftant custom of that country, the filum aqua of the river of Severn was the common boundary of the manors on either side of the tiver.

When this state of the evidence was opened, it was insisted upon, that the river in question was an arm of the sea, a royal river, and a member of the king's port, and therefore lay not in prescription to be part of a manor. But the court over-ruled that exception; and admitted, that even such a river, though it be the king's in point of interest prima facie, yet it may be by prescription and usage time out of mind parcell of a manor.

Thereupon the defendant went to his proofs, and infifted upon very many

badges of property or ownership; as, namely,

That the lords of the manors adjacent to this river, and particularly those of that manor, had all royal fish taken within the river opposite to their manor usque filum aque:

That they had the fole right of falmon fishing : A to her all a stated

That they had all wrecks cast between high-water and low-water mark :

That the lords of the manors adjacent had ancient rocks or fishing-places, and weares, or such as were of that nature, within the very channell:

That they had from time to time granted these fishing-places, some by lease, some by copy of court roll at their several manors, by the names of rocks, weares, staches, boraches, putts; and that they were constantly enjoyed, and rent paid by those copy-holders and lease-holders:

That by common tradition and reputation, the manors on either fide Severn were bounded one against another by the filum aque, and divers ancient depositions produced, wherein it was accordingly sworn by very many ancient witnesses:

That the increases happening by the reliction of the river were constantly enjoyed by the lords adjacent.

These and many other badges were opened, and were most effectually made good by most authentical evidences and witnesses. But before the defendant had gone through one-half of his evidence, the court and the

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king's attorney-generall fir John Banks, and the rest of the king's counsell, were so well satisfied with the defendant's title, that they moved the desendant to consent to withdraw a juror, which though he were very unwilling, yet at the earnest desire of the court and the king's counsell he did agree thereunto.

So that matter rested in peace, and the lands, being of the yearly value of two hundred pounds and better, are enjoyed by the lord Barclay and his farmers quietly and without the least pretence of question to this day. This I know; for I was thoroughly acquainted with this case, and attended at the bar at the tryall.

This great and solemn tryall for the right of a royall river, in a port and part of it, doth fully prove that which I have to say touching this matter.

But though the subject may thus have the propriety of a navigable river part of a port, yet these cautions are to be added, viz.

1st. That the king hath yet a right of empire or government over it, in reference to the safety of the kingdom and to his customs, it being a member

of a port, prout inferius dicitur.

and repassage with their goods by water, and must not be obstructed by nuistances or impeached by exactions, as shall be shewn when we come to consider of ports. For the jus privatum of the owner or proprietor is charged with and subject to that jus publicum which belongs to the king's subjects; as the soil of an highway is, which though in point of property it may be a private man's freehold, yet it is charged with a publick interest of

the people, which may not be prejudiced or damnified.

(3d.) As touching islands arifing in the sea, or in the armes or creeks or havens thereof, the same rule holds, which is before observed touching acquests by the reliction or recess of the sea, or such armes or creeks thereof. Of common right and prima facie, it is true, they belong to the crown ; but where the interest of such districtus maris, or arm of the sea or creek or haven, doth in point of propriety belong to a subject, either by charter or prescription, the islands that happen within the precincts of such private propriety of a subject, will belong to the subject according to the limits and extents of fuch propriety. And therefore if the west side of such an arm. of the sea belong to a manor of the west side, and an island happen to arise on the west side of the filum aque invironed with the water, the propriety, of fuch island will entirely belong to the lord of that manor of the west side ; and if the east fide of such an arm of the sea belong to a manor of the east side. usque filum aque, and an island happen between the east fide of the river and the filum aque, it will belong to the lord on the east fide; and if the filum

west, and leave an island in the middle between both the sila, the one half will belong to the one lord, and the other to the other. But this is to be understood of islands that are newly made; for if a part of an arm of the sea by a new recess from his ancient channel incompass the land of another man, his propriety continues unaltered. And with these diversities agrees the law at this day, and Bracton, lib. 2. cap. 2, and the very texts of the civil law. Vide Digest. lib. 41. de acquirendo rerum dominio, legibus 7, 12, 41, 29, 30, 38, 50, 56, 65. et ibidem, lib. 43. tit. 12. de suminibus, l. 1. § 6. Vide Bracton ubi supra. Habet etiam locum bec species accessionis in insula nata in slumine, que, si mediam partem sluminis taneat, communis eorum est, qui pro indiviso ab utraque parte sluminis prope ripam pradia possident, &c. For the propriety of such a new accrued island follows the propriety of the soil, before it came to be produced.

And thus much shall suffice to have been said concerning these incrementa maritima, and how they may in point of propriety belong to a subject. It remains, that a few words be said touching some other prerogatives, that have a cognation with this matter we are about, viz.

Wreck of the Sea; and Royal Fishes;

which shall be the business of the next chapter.

oll, in the length of the contract of the cont

Concerning the prerogative and franchise of wreck and its kinds, and royal fish.

S touching wreck of the sea, in the sirst place, it is sometimes called wreccum maris, sometimes waretum, which is sometimes in records applied to the accession of lands by alluvion. The record of the abbot of Peterborough, cited in the sormer chapter, is, domini babuerunt waretum et subulonem. Though I have used the word waretum, in the old French it is called wreck, and sometimes varech.

The kinds of it are two, viz.

2d. Improper for goods that are a kind of sea-waifs or stray, flot son, jet son; and lagon.—Of both these briefly.

interior state by the cure up the

I. Touching wreck of the sea. It is not properly wreck, till it be cast upon the shore or land; and therefore by the statute of 15, R. 2. cap. 3. wreck

wreck of the sea is declared to be determinable by the laws of the land, and not before the admirall in any wise; and it was one of the articles anciently within the inquiry and jurisdiction of the coroner. Vide stat. 4. E. 1. officium coronatoris, viz. concerning wreck of the sea, wheresoever found; and if any lay hands on it he shall be attached by sufficient pledges, and the price of the wreck shall be valued and delivered to the towns. This power was annexed to the coroner by the statute of 3. E. 1. called Westminster 1. And therefore as long as the goods are floating upon the sea, they are not wreck; and according is the resolution 5. Reports, fir Henry Constable's case.

But all goods cast upon the shore are not therefore ipso faste wrecked so as to intitle the king or lord of a liberty to them; but it must have these

qualities, viz.

For if the goods were taken by pirates, and then they come or be brought or left upon English ground by any means, they are not wreck to be forseit, but provision is made for restitution to the merchant by the statute of 27. E. 3. cap. 13. And upon this account it seems, that resolution of the judges is grounded, which is cited in the comment upon Westminster 1. cap. 4. viz. that if enemies or pirates take a ship, and take out all the passengers and goods, and turn the hull to the sea, and it is cast upon the land, though no living thing come in her, she is not wrecked so as to give the forseiture. Yet though the law may be such, the case, that is cited, warrants it not, which is Clause 5. R. 2. m. 24.; for there the mariners got all to land in Norsolk in the long-boat, and left the ship to the enemies, and so within the following rule.

2d. Though the ship or goods be wrecked and cast upon the shore, yet if any living thing escape alive to land out of the ship, it is not such a wreck as gives a forseiture. And this was the ancient law before the statute of Westminster 1. cap. 4. as is resolved and made evident by the resolution of Constable's case, ubi supra, and the lord Coke's comment upon that statute; for though the common law give the king bona wreccata, as shall be shewn; yet, because it was lex odiosa to add affliction to the afflicted, it was bound up with as many limits and circumstances and to as narrow a compass as

might be.

3d. That these goods be cast upon the shore or land, and not brought thither in a ship or vessel. Vide inter placita Gersey 2. et 3. E. 2. A ship was broken at sea; and the goods floating in the high sea, certain mariners took them up and put them on ship-board, and they came with their ship into the land of Gessey Carteret, who by charter had wreck of the sea; and before he seized, the vessel went to the shore of the abbot of Chirburgh, who

had likewise wreck. The goods being seized by the king's officer, these two interplead for the goods as wreck.

Et Willielmus le Mareis, qui sequitur pro domino rege, dicit, quòd nullus eorum petere possit bona prædista ut wreccum; quia dicit, quòd ea tantùmmodo sunt wreccum, quæ slustus maris projeciunt ad terram, vel infra portum, aut tam prope terram, quòd à santibus in terra possunt perpendi, et sic ducantur vel trabantur ad portum; sed quæ reperta sunt in alto mari, unde certum non existit, quòd slustus maris ea vellent projecere, si non per laborem marinellorum levantium à mari, et ponantur in navi vel batello, et sic in vasi ducantur ad terram et non tangunt terram alicujus pertrabentium, nec alio modo non possunt dici wreccum, sed tantùmmodo de adventuris maris, de quibus nullus potest aliquid clamare, nisi salvatores et dominus rex, vel ille, cui rex concesserit libertatem percipiendi bujusmodi adventuras. Et petit judicium pro domino rege, et prædisti, &c. non dedicere possunt. Consideratum est, quòd prædista vina remaneant domino regi, et prædisti Petrus et alij in misericordià pro salso clamore. Postea prædista vina de prædistis doliis concessa sunt prædisto priori pro 60s. de quibus solvit prædistis salvatoribus 40s. pro parte sua, et de 20s. residuis respondet regi.

This, though it were a proceeding in Gersey, who were heretofore and yet are guided by the customs of Normandy, yet even these customs as to the point of wreck are very near if not altogether the same with those of England, as appears by the 17th chapter of the Grand Custumier, de Varech. And this resolution above cited is consonant to that of fir Henry Constable's case, 5. Reports, though differing in terms and names.

And thus much of the nature of wreck, and this by the laws of England is forfeit; and the propriety of the first owner is, by the seizure of the king, or his officer, or lord of the liberty having his franchise, wholly divested.

But if goods are cast upon the shore, though they have not all these properties, they may be seized by the king, or the lord that hath the liberty of wreek, and lawfully detained, till the right owner come and claim them, and make it appear that they are his; and the common law allowed him a year and a day for the making his claim. And therefore as to this also the statute of Westminster 1. cap. 4. was but an affirmance of the common law, as it seems; for the very same time is allowed for the claim of goods so seized by the Customer of Normandy.

And the time, from whence the day and the year is to be accompted, is from the time of the seizure, as appears by the comment upon that statute; and if not claimed within that time, they were lost.

But if there were a seizure by persons that had no right to seize, the elapse of the year and the day, as it is conceived, did not bar the right owners.

The statute of the 27. Ed. 3. cap. 13. provides more expedition for the restitution of the merchant, where the goods are not lawful wreck; but it seems the generality of that statute takes not away the loss of the goods by non-claim by a year and day after seizure.

35. H. 6. 27. If goods of a common person be seized as wreck, if he claim not in a year and day, they are lost; but if the king's goods were wrecked, he need not claim.

And note, this claim is available only where the goods are cast upon the shore, but they are not a legal wreck, as perchance some living thing escaped to the land. But where the goods are a legal wreck, this claim signifies nothing; for the goods are inso faste forfeit by being wreck and seized; for the provision of the statute of 3. E. 1. as to the claim and proof within the year and day refers only to such goods as are cast upon the shore, but are not lawful wreck.

But yet in such case, where the goods are not wreck in law, the merchant must allow salvage, or the charge that the taker up of the goods is at for their saving. Pat. 14. E. 4. m. 12. dorso.

Thus much for the nature of wreck. Now concerning the propriety of it. The statute of Prerogativa Regis, cap. 11. tells us to whom wreck doth of common right belong in England. Rex babebit wreccum maris per totum regnum, balenas et sturgiones captas in mari vel alibi infra regnum, exceptis quibusdam privilegiatis locis per regem.

This was the common law before this statute; and this statute as to this point, and most if not all other points of prerogative in that statute called *Prerogativa Regis*, is but declarative of the common law, and rather a repetition or collection of the king's prerogatives than any enacting law.

And the same was the prerogative of the duchy of Normandy, as appears in the Grand Custumier, cap. de Varech.

William the first, yea and by Edward the Confessor, of wreck and jassura maris. of along the state of the sta

King R. 1. in the fecond year of his reign released wreck through all England, as the same author cites it out of Hoveden. But his successors resumed the prerogative again, and that before the statute of 17. E. 2. called *Prerogativa Regis*; and frequent instances thereof are long before that statute in the times of E. 1. H. 3. and king John.

But though wreck of the fea doth de jure communi belong to the king, yet it may belong to a subject.

and this is without question. and the standard and the

2d. By prescription; and although this was doubted in the time of Bracton, yet the law is settled and unquestionable at this day.

Sometime wreck hath belonged to an honour by prescription; as to the honour of Arundel, though the caput haronic were in the county of Suffex; being another county from the place where the wreck arose. T. g. E. 1. B. R. Rot. 20. Essex.

Sometime to the owner of a county. The lords of all counties palatines regularly had wreccum maris within their counties palatines, as part of their jura regulia. But yet inferior lords might prescribe for wreck belonging to their severall manors within a county palatine. The earl of Cornwall, which though it were not a county palatine it had many royalties belonging to it, had wreccum maris per totum comitatum Cornubia, viz. as against the king, though particular lords might prescribe for it against the earl. P. 14. E. 1. B. R. Rot. 6. & 29. Cornubia.

And thus much concerning wreck, and the right of it.

II. Somewhat is fit to be mentioned concerning flot fon, jet fon, and lagon.

These are not wreck of the sea, but of another nature; neither do they pass by the grant of wreccum maris, as is resolved in that case of fir Henry Constable, and the case of the 3 E. 2. where they are stiled adventure maris.

And as they are of another nature, so they are of another cognizance or jurisdiction, viz. the admirall jurisdiction.

The right of flotson, jetson, and lagon, and other sea-estrayes, if they are taken up in the wide ocean, they belong to the taker of them, if the owner cannot be known.

But if they be taken up within the narrow seas, that do belong to the king, or in any haven port or creek or arm of the sea, they do prima facie and of common right belong to the king, in case where the ship perisheth, or the owner cannot be known; which is also one of the resolutions of sir Henry Constable's case. But if the owner can be known, he ought to have his goods again; for the casting them overboard is not a loss of his propriety.

Although the right of these adventures of the sea within the king's seas belongs to him, where the owner cannot be known, yet the king hath little advantage of it; for by the custom of the English seas, the one moiety of what is so gained belongs to him that saves it. And accordingly the custom is recited in a letter by the king of England to the French king, Claus. 7. E. 3.

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parte 1. membrana 23. dorso, to satisfy him of the usage, that if the merchants goods, that are floating in the fea, be faved, though the merchant made out his property, yet the goods were usually divided, the one moiety to the merchant, and the other moiety to them that fave them for falvage. But it feems by the statute of 27. E. 3. cap. 13. that hard custom was mitigated as to the merchant; and a reasonable amends allowed for salvage, according to the expence pains or adventure of them that faved it. But whether any thing hath altered that custom as to the king, I find not.

The other moiety of these bona vacantia taken upon the narrow seas was anciently, and I think at this day, taken by the admirall as his fee; which yet orit eintin turat innantin et i

he takes in jure regis.

And this appears by the old articles of the admiralty entered in the black book of that court, wherein, though there may be many extravagant articles. that no way belong to their jurisdiction, yet those that concern these things in question are good evidence what the usage was.

Among which this was one : Item foit inquise de touts neifes vefseux et hateux. que sont troves waife sur le mere, dont l'admiral ne ad sa part à lui due d'office, c'est And the results of the state of the results of the second section of the second second

à dire la moity.

And again : Item soit inquise de touts ceux, que ont trove sur le mere flotesan tonne ou pipe de vyne ou doyle ou bales de madder drape coffres ou autres choses dont l'admiral ne ad sa part à lui due d'office.

And thus much for the jus commune of these adventure maris.

But yet a subject may be intitled to these, as he may be intitled to wreck, viz.

ift. By charter.

2d. By prescription. And that is agreed in that case of fir Henry Constable, viz. that a man may have flotson, &c. by prescription between the highwater and low-water mark. Some of the west countrey prescribe to have it as far as they can fee a Humber barrell. And much more may be had by prescription in an arm of the sea; and accordingly the barons of Barclay have ever had it in the river Severn, of the east fide of the filum aque, overagainst their barony of Barclay.

These liberties of wreck, slotson, jetson, and lagon, and that also of royal fish, may be parcell of or belonging to an hundred. But enough of

tells of their advances of the for views which

this.

Now touching royal fish, therefore called so, because of common right fuch fish, if taken within the seas parcell of the dominion and crown of England, or in any creeks or armes thereof, they belong to the crown; but

if taken in the wide sea, or out of the precinct of the seas belonging to the crown of England, they belong to the taker. 139. E. 3. 35. per Belknap.

Touching the kind of these sishes that are called royal sish, there seem to be but three, viz. sturgeon, porposse, and balana, which is usually rendered a whale. Claus. 5. R. 2. m. 29. de pisce vocato whale jam noviter ad terram in solo prioris de Merse alienigena in manu regis existente ad opus regis desegnado.

But because they may be great fish that come under no known denomination, we find the claim of such under the name of piscis regius, or sometime grand pisce, without any certain denomination. Vide Claus. 20. H. 3. m. 3-dorso. A controversy between the king's bailiss and the prior of St. Swithen de quodam pisce regio claimed by each without any distinct name. The prior procures the king's bailiss to be thereupon excommunicated, and the king commands his absolution. But salmon or lamprey are not royal fish.

By the common right of the king's prerogative these belong to the king, if taken within his seas or the armes thereof.

Anciently the intire sturgeon belonged not to the king; but only the head and the tail of the whale, according to Bracton, cited by Stamford upon this chapter of the prerogative.

According to the custom used in the admiralty, these great sish, if taken in the salt water within the king's seas, they were divided, and a moiety was allowed to the taker, the other moiety to the admiral in right of the king; one of the articles of the admiralty above cited being, Item soit enquise de ceux, que ont prise ou trove sur le mere whales, balens, surgeon, porpoise, ou grampise, dont l'admiral n'a sa part pur le roy, c'est à scavoire la moitie.

Where observe these two things:

1st. That these royal fish extended to other than whale and sturgeon, viz. to

porpoise, and grampise, or great fish.

2d. The admirall is to be answered for the king the moiety, which seems to expound Bracton as to the division of the whale. The king had the head, and the queen the tail, which countervailed a moiety; and the taker had the body, which countervailed the other moiety.

Thus much for the right of the king to these royal fish.

A subject might and may unquestionably have this franchise or royal perquisite,

1. By grant.

2d. By prescription within the shore between the high-water and lowwater mark, or in a certain distinct districtus maris, or in a port or creek or arm of the sea; and this may be had in gross, or as appurtenant to an honour manor or hundred, as appears by infinite precedents and examples and books of the law.

And this shall suffice concerning the rights of the sea and the creeks thereof according to the laws of England, as far forth as it is necessary to be known in order to what follows, viz. the havens ports and creeks of the sea within the dominion of the crown of England, which shall be the business of the second part of this discourse, as a necessary pracognitum to the customes and right thereof according to the laws of England.

As follows the first between thicking a natiff and the prior of St. Switches at follow the king's claimed by the number my diffind name. The property of king's boild? To be illustrated at exclusion care defined and the king of maintains and the king of the first state of the state of the state of the state of the first state of the state of

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the fire water within the Ling's feather to the chain the anternative was allowed to the taken, the object moiety to the chainful in right of the king; one of the articles of the adviralty above cited being, this fire fequipate carry, que on grife on trong fur is more whater, but my firefer, herein, and from the factors of the firefer, the control of the firefer, the control of the firefer, the control of the factors of th

Where observe their even in tigger.

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C A P. I.

The method of the enfuing discourse.

THE method that I propound to myself in the ensuing tract, is this.

I. I will consider, what a port of the sea is, and the differences of havens, roads, ports, and creeks.

II. The manner of the erection and creation and diffolution of ports.

III. The manner of the translation of ports to a subject.

IV. The history or narrative of certain particular ports, as Yarmouth, Hull, Newcastle, for the explaining of the right of ports.

V. The threefold rights that meet in all ports of the sea.

(1.) Jus privatum of the port.

1st. In point of franchise.

2d. In point of propriety of the foil both in the land adjacent and in the fea.

or set; the greater are made easy by

- (2.) Jus publicum of ports; and herein of the liberty of access to and from ports; and of nuisances.
 - ist. More restrained, that concern the town where the port is situate, viz. forstalling and erecting houses between the port and the sea.
 - 2d. More publick, and how redreffed.
 1st. Stoppage of the passage.

2d. Exactions of undue tolls or fees.

- (3.) Jus imperii or regium, and therein of what power by law there is of opening or shutting of the ports.
 - ist. In relation to the safety of the kingdom.

2d. In relation to the trade of the kingdom.

3d. In relation to customes; and herein of some port duties relative thereunto.

CAP.

C A P. II.

Touching the names of roads, havens, ports, and creeks. The nature of ports.

FOR the better explication of the nature of sea-ports, we are to consider some things and terms, that have cognation therewith, and the meaning of portus maris.

We find in common speech four terms, that usually occur in relation to the subject we have in hand, viz. a road, a baven, a port, and a creek.

A read is an open passage of the sea, that receives its denomination commonly from some part adjacent; which though it lie out at sea, yet, in respect of the situation of the land adjacent, and the depth and wideness of the place, is a safe place for the common riding or anchoring of ships; as Dover road, Kirkley road, Hung road.

A baven is a place of a large receipt and safe riding of ships, so situate and secured by the land circumjacent, that the vessels thereby ride and anchor safely, and are protected by the adjacent land from dangerous or violent winds; as Milford haven, Plymouth haven, and the like. And these are some larger, some narrower. The smaller are sometimes made or at least helped by art; the greater are made only by nature,

A port is an haven, and fomewhat more.

1st. It is a place for arriving and unlading of ships or vessels.

· 2d. It hath a superinduction of a civil signature upon it, somewhat of franchise and privilege, as shall be shewn.

3d. It hath a ville or city or borough, that is the caput portus, for the receipt of mariners and merchants, and the securing and vending of their goods and victualling their ships. So that a port is quid aggregatum, consisting of somewhat that is natural, viz. an access of the sea whereby ships may conveniently come, safe situation against winds where they may safely lye, and a good shore where they may well unlade; something that is artissicial, as keys and wharfs and cranes and warehouses and houses of common receipt; and something that is civil, viz. privileges and franchises, viz. jus applicandi, jus mercaii, and divers other additaments given to it by civil authority.

A port of the sea includes more than the bare place where the ships unlade, and sometimes extends many miles; as the port of London anciently extended to Greenwich, in the time of King Edward the first; and Gravesend is also

a member of the port of London; the port of Newcastle takes in all the river from Sparhauk to the sea; the like for the extent of Yarmouth, Bristol, &c.

The caput portus, or town that gives its denomination, is sometimes unaccessible by ships or great vessels, but only by small vessels or lighters; and yet it gives the denomination to the port, and is the head of it. Thus Exeter is the caput portus, yet no vessels of burthen come within four miles of it.

T. 33. E. 1. rot. 55. Hibernia. An inquisition is had touching the port of Dublin, qui dicunt, quòd nullæ magnæ naves, carcatæ vinis seu aliis mercandisis, applicare possunt in portu Dublin, quousque in parte discarcantur, quòd ex consuetudine bactenus obtentà bujusmodi naves carcatæ vinis in veniendo versus Dublin morari consueverunt apud Dalkey, et ibidem se ex parte discarcare; et vina sic discarcata per naviculas usque in civitatem Dublin ducere, absque aliqua prisa ibidem præstanda, et similiter absque boc quòd captor vinorum domini regis aliqua vina ibidem nomine prisarum signaret, et post bujusmodi discarcationem naves illæ cum residuis vinis suis applicare consueverunt apud Carnan, quæ est insra præcinstum prædittæ civitatis, et tunc captor bujusmodi prisarum pro sua voluntate et electione capere consuevit prisam domini regis, vel de vinis sic in manibus prædittis relictis, vel de ipsis vinis priùs discarcatis, sive vina illa fuerint infra cellaria sive non, ita tamen quòd siat nulla venditio de bujusmodi vinis, antequam prisa illa capta fuerit, sine licentid captorum prisæ illius.

I have inserted the whole inquisition, because I shall hereafter use it to another purpose. But I use it here only to this end, to shew that the caput portus, and which gives it the denomination, is not always the next place of great vessels. The like is seen also in the port of Bristol and divers others.

In respect of this extensiveness of a port beyond the vill that gives its denomination, if a thing be alledged to be done in portu de Blakeney, the venire facias de vicineto portus is good, 7 H. 6. 22. But yet because the court cannot take notice ex officio, that it extends farther than the vill, a venire facias de vicineto de Blakeney hath in that case been ruled good.

And thus much in general for the fignification and description of a port.

A creek is of two kinds, viz. creeks of the sea, and creeks of ports.

The former fort are such little inlets of the sea, whether within the precinct or extent of a port or without, which are narrow little passages, and have shore of either side of them. The latter, viz. creeks of ports, are by a kind of civil denomination such. They are such, that though possibly for their extent and situation they might be ports, yet they are either members of, or dependent upon other ports. And it began thus. The king could not conveniently have a customer and comptroller in every port or haven.

But these custom-officers were fixed at some eminent port; and the smaller adjacent ports became by that means creeks, or appendants of that where these custom-officers were placed.

The state of the ports and creeks thereof upon this account at this day stand thus, viz.

LONDON cum membris;

London,

Blackwall,

Gravesend,

Lee.

SANDWICH cum membrit;

Sandwich,

Deal,

Ramfgate,

Margate,

Milton.

FEVERSHAM ;

Feversham.

ROCHESTER cum membris;

Rochester,

Queenborough.

DOVER cum membris;

Dover,

Foulkstone.

CHICHESTER cum membris ;

Chichester,

Meecham,

Shoreham.

Newhaven,

Arundell.

RYE cum membris ;

Rye,

Winchelfea.

Hastings,

Pevensey.

SOUTHAMPTON cum membris;

Southampton.

Portsmouth,

Gosport,

Longston,

Lymington,

Hurst Castle,

Upchurch,

Cowes,

Yarmouth.

POOLE;

Poole.

WEYMOUTH;

Weymouth.

LYME;

Lyme.

EXETER cum membris;

Exeter,

Apfham,

Tidcomb,

Sharecrofs,

Pouldram,

Sydmouth,

Aufterton.

DARTMOUTH ;

Dartmouth.

BARNSTABLE cum membris

Barnstable,

Appledore,

Newke,

Biddiford.

Ilfordcum.

Clovelly,

Hartland,

Combmartin,

Watermouth. 18 15 159 1 10 30 8150

BRIDGEWATER;

Bridgewater.

PLYMOUTH

PLYMOUTH cum membris;	Helbre,
Plymouth,	Fradsham,
Saltash,	Beaumaris, .
Fowey,	Conway,
Truro,	Mostin,
Penryn,	Baghill.
Helford,	Liverpoole;
Penzance,	Liverpoole,
St. Ives,	Sanchbridge.
Padstow,	PRESULL;
Loo.	Prefull,
MINEHEAD;	Creeke.
Minehead.	CARLISLE;
CARDIFF cum membris;	Carlisle.
Cardiff,	Berwick;
Penarth,	Berwick.
Newport,	Newcastle cum membris;
Chepstow,	Newcastle,
Llanelthy,	Sheels,
Penry,	Blithnook,
Abarthare,	Sunderland,
Swanfey.	Hartlepool;
MILFORD cum membris;	Stockton,
Milford,	Whitby.
Carmarthen,	KINGSTON cum membris;
Tenby,	Kingston super Hull,
Morgan,	Scarborough,
Cardigan.	Bridlington,
ABERDOWY;	Grimfby,
Aberdowy.	Yorke.
BRISTOL cum membris;	Boston cum membris;
Briftol,	Boston,
The Pill,	Saltfleet,
Uphill.	Spalding,
GLOUCESTER;	Wainefleet,
Gloucester.	Fosse-dike,
CHESTER cum membris;	Sutton-imarsh.
Chefter,	LYNN cum membris;
Neffon,	Lynn,
사람들은 사용하다 경기 회사 하나를 하는 것이 되었다. 그는 사람들이 가장 아니는 사람들이 되었다면 하는데 살아 되었다면 하는데 살아 없는데 하는데 하는데 하는데 하는데 하는데 하는데 하는데 하는데 하는데 하	H Heafham,

Heasham, Woodbridge.

Burnham, Ipswich cum membris;

Wisbeach, Ipswich, Crossekey. Harwich, Manytree.

Yarmouth, Colchester cum membris;

Norwich, Colchefter,
Clye, Wyvenhoe,
Leystoff, Blockhouse,
Southold, Malden,
Aldborough, Burnham.

Thus stands the state of the ports wherein there are customers and comptrollers; and the members or creeks of those ports where there are none; but only these officers in the principal ports substitute servants to observe and take notice of goods exported and imported, to see that they agree with the entries they make at the principal ports. Vide stat. 4. H. 4. cap. 20.

against unlading in creeks.

And by the statute of the 1. El. cap. 11. no person is to land any goods in the ports of London, Southampton, Bristoll, Westchester, and Newcastle, but at such keys or wharfs there, as the queen should appoint before September next; nor in any other port creek or haven, Hull excepted, but where a customer comptroller and searcher, or the servants of any of them, had been resident by the space of ten years last past, or should thereafter be resident, upon pain of sorfeiture of the goods so landed; which was the greatest and most effectual limitation and restraint of ports that could be, because it left it in the king's power to restrain any other ports than those that were then used for the unlading of goods.

And thus much in general for the nature of ports. More particulars will occasionally emerge touching their nature in what enfues.

C A P. III.

Concerning the manner of erecting of ports; and by whom it may be done.

HIS kingdom is an island, and the ports of the kingdom are the gates, offia regni, as well in reference to the exercise of trade, as in reference to the safety and security of it against foreign enemies.

And every publick port is a franchise or liberty, as a market or a fair, and much more.

For, 1st. it is a place of common refort of merchants and shipping, arrivagium navium et batellorum, within itself a franchise.

- 2d. And, secondly, every port had of necessity a market belonging to it, as well for the vent of merchandizes that were imported or to be exported, as for the vent of victualls and provision for the supply of mariners and victualling of ships; and therefore, if any did erect any victualling-houses between the port town and the sea, it was punishable.
- 3. And, 3dly, to every publick port there were certain common tolls incident, as for wharfage and land-leave and the like, which by law cannot be taken without a lawful title by charter or prescription. It was one of the articles in Eyre de notis consuetudinibus levatis in regno, sive in terra, sive in aqua; and therefore, Pas. 11. Car. B. R. in the case of Morgan, against whom an information was preferred for taking certain rates for merchandizes unladen upon his own land at Crochampill near Bristoll, it was resolved, that though he might take amends for the trespass in unlading upon his ground, yet he might not take it as a certain common toll; and for so doing he was convicted, and fined one hundred marks.

Upon all these considerations it is evident, that the king hath a special concern and interest in the franchise of a common port; and consequently from hence it is evident,

- (1st.) That no subject may institute or erect a common port without the charter of the king or a lawful prescription; and if he doth, the liberty or pretended liberty is seizable in a quo warranto, and the party that doth it is to be fined and to be adjudged, quòd omnia signa portus penitus amoveat. Thus it was done in the case of the prior of Tinmouth, 20. E. 1. the record whereof follows in the chapter where we come to speak of the nuisances of a port, and how remedied.
- (2d.) As a subject cannot erect a publick port for all comers, so he cannot without a lawful prescription or charter erect a port for the men of such a see or precinct, as for his own tenants.

Both these former affertions appear in the notable case of the ports of Waterford and Ross, which though in Ireland, yet the law is the same there as in England as to this purpose.

Claus. 11. H. 3. m. 3. it appears, that the king granted to the earl of Penbroch such a kind of restrained liberty of a port. Rex concessit et licentiam dedit Willielmo comiti Mariscallo, quòd naves de dominica terra sua, cum mercandisis in eis contentis, liberè expeditè et sine impedimento veniant ad portum suum de Rosse, et ibidem morentur, et inde recedant, dum tamen aliæ naves de terra domini regis, et naves de aliis terris venientes in Hiberniam, eant et veniant

ad portum de Waterford. Et mandatum est G. de Mariscis, quòd naves de terrâ ipsius comitis ad portum suum venire permittat, et alias naves ad portum de Waterford.

Here was a restrained port not free to all; and the earl must have the king's charter before he could erect it. The earl, being a great prince in Ireland, and having gotten this footing, grafts upon it, and accroacheth the liberty of a common port for all comers; and thereupon there issued out of the chancery this ensuing writ, directed from the chancery in England to the Justiciarius Hibernia, viz. Claus. 20. H. 3. m. 4. Cum villa nostra de Waterford. sicut audivimus, plurimum deteriorata est per applicationem navium, que, omisso portu ejusdem villæ, veniunt apud Rosse et insulam in terra G. Mariscal, comitis Penbroch; mandaverimus eidem comiti, quòd nulla naves in terra sua pradicta applicare debeant, nist illi solummodo, qui fuit de terra sua propria, et boc de permissione nostra: probiberi facias, quòd naves alique, nisi naves hominum suorum de terrà sua propria de cetero non applicent apud Rosse, nec apud insulam, per quod prædista villa nostra damnum incurrat; quòd nist facere voluerint, per nos fieri faceremus, et ideò vobis mandamus, quòd clamari facias, et firmiter inbiberi, nec aliqua navis, que non sit de proprià terrà ejusaem comitis, apud Rosse vel insulam applicare de cetero presumat, super forisfacturam nostram; sed magistri et marinarii tendent et occident cum navibus suis et mercandisis usq; Waterford si voluerint, et ibidem negotiari, ficut seipsos volunt indemnes conservare.

And the like mandate almost verbatim issued by proclamation. Pat: 19. E. 1. m. 10. dors. But note, that afterwards there was a composition settled between the ports of Rosse and Waterford, by the king's award. Vide Trin. 50. E. 3. B. R. rot. 19.

. By this it appears,

ast. That the liberty of such a special restrained port is not to be taken up without warrant by charter or lawful prescription.

2d. That being granted, it cannot be enlarged to be a common port to all comers.

3d. Much less can such a common port be usurped without a lawful

grant.

(3d.) But yet farther it feems, that a subject cannot, neither could by law at any time after customs were settled, arrive with customable goods and ship of his own at his own land, unless it had been a publick port where the king's officers for the collecting of those customs were settled; for this were to defeat the king of his duty: and consequently it seems, that not only the non-payment of the king's duties was punishable, but even the first application to his own port, whereby the king's officers were prevented not only

only of the duty, but of the means of discovery of it. Punishable it was by fine, as a contempt or deceit to the crown; but no forfeiture of the goods could thereby accrue, till the statute of the i. El. cap. 11. had made a provision therein. And this seems to be reasonably inferred upon the case of John de Britannia for the port of Little Yarmouth, set down at large in the ensuing fifth chapter, and the award of the king's councill touching the same.

(4th.) But any man might bring and unlade his own private goods, which are not customable, in his own private ship or vessel upon his own land, as sish taken by Englishmen; for this was no accroachment of a port at common law, and fish are excepted out of the statute of 1. El. c. 11. And this may likewise be plainly collected by the decree of the king's councill made in the case of Little Yarmouth, hereafter mentioned.

In case of necessity, either of stress of weather, assault of pirates, or want of provisions, any ship might put into any creek or haven, stat. 4. H. 4. c. 20. And though regularly the ports themselves ought to find provisions for ships and mariners, and ought not to be anticipated or fore-stalled therein, as shall be shewn; yet in case of necessity, or for the supply of sishermen, all places were as to that purpose and end ports. And this appears by the statute of 31. El. cap. 7. against cottages, wherein are excepted such cottages as are erected within a mile of the sea, or upon the side of such part of any navigable river where the admiral ought to have jurisdiction, so long as no other person shall therein inhabit but a sailor, or man of manual occupation to or for making, surnishing, or victualling any ship or vessel used to serve on sea.

And thus far we have considered, how far forth private subjects may or may not erect any port. But yet farther:

A lord of a county palatine, though he may have and usually had ports by charter or prescription, yet he cannot erect a common port within his palatine jurisdiction. And the reason is, because the concernment of a port must necessarily exceed the extent and limits of his jura regalia that are incident to a county palatine; for the safety of the kingdom, the commerce of the kingdom, and the king's revenue, are concerned in it. Merchants and seamen of all parts and quarters of the world are let into the kingdom publickly, and under the publick protection in a publick port; and consequently it is not within the extent of a jurisdiction palatine de novo to erect a publick port.

And now we have feen in whose power it is not to erect or create a port, it easily lets us see in whose power it is. It is a part of the jus regale or royalty

royalty of the crown of England originally and de novo to erect publick ports in this kingdom. As all franchifes within the kingdom are derived from the crown, either immediately and explicitly, as by new erection, grant, or charter; or prefumptively and confequentially, as by custom or prescription; so in a special manner are the ports and the franchises thereof, which are oftia regni.—And concerning the manner of the creation, erection, or institution of a port, in the next chapter.

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Touching the title or origination of ports by prescription, patent, or charter.

ALTHOUGH the more regular method were to begin with the origination of ports by charter or patent, because that shews the first constitution of them; yet, because it is more suitable to my defign, I will begin with that which is by custom or prescription.

I have before intimated, and in the ensuing discourse shall more distinctly shew it, that in the consideration of a port there are these two things in-

volved, viz.

of town, which is the caput portus, and of the foil of the haven itself wherein the ships do ride or apply.

2d. The confideration of the interest of franchise, or the liberty itfelf; that civil signature which doth give the liberty of publick arrivage itself, which is in truth the formale constituens of a port, in a legal signification.

Both these are acquirable by prescription, without any other formality appearing, though presumed. Ex disturnitate temporis omnia prasumuntur rite asta.

By this title a port may without question be settled in the crown; and indeed upon that account most of the ports of England, both in point of franchise and propriety of soil, are at this day lodged in the crown; as will easily appear in the perusal of the catalogue of the ports and creeks of England before expressed, though most of them are now in farm to the towns of the ports.

And upon the same title and account they may be settled and lodged in the subject, as well in point of propriety of soil as in point of franchise; and so were many ports of the sea, which were enjoyed by subjects by the title of prescription without any charter thereof extant, or at least for most of them: and of this we shall give some instances.

In originali 3. Ed. 1. libro rub. 256. (which I shall have hereafter occasion to use) it appears, that many ports were then held by subjects. Et le roy ad graunt de la grace que toutes les seignioryes per qui ports lames on quiyres aient les forseitures quant els avendront, chescun en son port, save au roy demy marke de chescun sack de line et de pens et un marke de chescun last de quires.

The earls of Chester had the port of Liverpoole as belonging to the county palatine of Chester, and possibly divers other ports within that earl-dom palatine; and had their prisage of wines. Claus. 40. E. 3. m. 22. pro Stephano de Ward, who was there by the king's writ discharged of prisage, because formerly paid to the king for the same wines.

Inter placita parliamenti de tempore E. 1. the port of Milford did partly belong to the county palatine of Penbroch, which was the inheritance of that earl and Joan his wife, and partly did belong to the barony of Haver-fordwest, then in the king's hands by certain metes and bounds. Remedy provided against the incroachments of the king's bailiff upon the earl's port.

The port of Hartlepoole did sometime belong to Robert de Brus; for the record saith, quod Robertus de Brus babet mercatum et seriam apud Hartle-poole, et portum maris, et babet ibidem keelagium et prisam piscis. For the rebellion of Robert de Brus against the king, it seems the bishop of Durham, who hath royal escheats within his county palatine, came to be owner of this port, and accordingly made title to it, and held it, and also prisage of wine within the same. Communia Trin. 6. E. 3. in Scaccario.

The port of Toppesham belonged to the earl of Devon. Escaest.

12. E. 1. n. 1. Portus et piscaria et mariscus de Toppesham speciant Amiciacomit. Devon. It appears m. 3. et 4. E. 1. coram rege, Rot. 16. Devon, that there was a contest between the countess of Devon and the mayor and burgesses of Exeter, who had the port of Exeter in see farm, touching certain usurpations by them upon the countess at Toppesham; and upon an issue joined a verdict given for the countess, viz. Juratores dicunt, quòd Baldwinus de Riperiis, quondam comes Devon, et omnues antecessores sui à conquestu Anglia, et similiter. Amicia comitissa Devon, qua manerium de Toppesham tenet in dotem, suerunt in seisina, quòd mercatores ad pradictum portum venientes, pro voluntate sua poterunt ad dictum portum de Toppesham naves suas applicare, et mercaturas suas ibidem exonerare, et per particulas et in grosso vendere, et ibidem pernostare, et cibaria-

In Warrer

sua emere: ideò consideratum est, quòd mercatores de cetero pro voluntate sua possunt ad prædicum partum applicare et exonerare, &c. Et cives Exon in misericordia, &c. et prædicta comitissa recuperet damna trigint' libr.

Upon these records it appears,

- 1st. That the earls of Devon had the propriety of the soil of the port by prescription; for they had all the profits that arise by reason of the property of soil, viz. the sishing and the salt marsh, which possibly might be an incrementum maritimum.
- 2d. They had also the franchise of the port by prescription, and all the incidents thereof, viz.
 - Ift. Applicatio navium.
 - 2d. Exoneratio navium.
 - ad. Mercatum et venditio mercandifarum in gross et per retail.
 - 4th. Victualling of mariners and ships.
 - 5th. Lodging and entertainment of mariners.

All which are privileges in a special manner belonging to ports, and cannot be had without that liberty legally vested; as shall be shewn in due time.

P. 10. E. 3. B. R. rot. 73. dorso, it appears, that Willielmus Designariena, comes Surrey, had the port of Poole, and anchorage and other duties belonging to it.

It appears among the charters of the duchy of Cornwall, the transcripts whereof remain in the receipt of the exchequer, that Rogerus de Valle-tortavantort gave to Richard king of the Romans and earl of Cornwall, and the heirs of his body, castrum de Trematon et 59 seoda militum in Cornwall et Devon, ad idem castrum pertin, ac etiam manerium de Trematon et villam de Esse cum aqua.

To this castle of Trematon belong a certain petty manor called Sutton-vantort, and also the water and port of Sutton: for so it appears by the close roll, Claus. 17. E. 2. m. 14. Sutton cum aquâ et portu spectat ad castrum de Trematon.

By the death of Edmond his fon without iffue, the earldom and this castle came to the crown. Possibly Richard earl of Cornwall, after issue had, made some alienation before the statute of Westminster 2. whereby the reversion to the heirs of Vantort was barred.

The earldom of Cornwall and this castle of Trematon descended to king Edward 3. He by charter in parliament grants the earldom of Cornwall to his eldest son, et castrum et manerium de Trematon cum villa de Saltash et parco ibidem cum aliis pertinentiis. See the charter 8. Rep. 8. the Prince's Cases.

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By this grant, without any special mention of the water or port as belonging to it, the port and water of Sutton, now Plymouth, was annexed to the duchy of Cornwall; for though the charter grants prises et custumas vinorum, necnon proficua portuum nostrorum infra eundem comitatum Cornub. simul cum wrecco maris et balend et sturgeone, yet that did not extend to the water of Sutton, which was in Devon, but it passed by the strength of its being parcell of and appendant to the castle of Trematon.

The town of Plymouth, which is indeed caput portus, from whence the port now takes its denomination, was not part of Trematon, but built upon the manor of Sutton Prior, and was incorporated and its jurisdiction settled by act of parliament, Rot. Parl. 18. H. 6. n. 32. and confirmed by Rot. Parl. 3. E. 4. n. 45. But always in both, whatsoever was parcell of the manor of Trematon was excepted; and consequently the haven itself, which was parcell of Trematon, was not annexed thereby to Plymouth, but stood upon the same foot of interest as before.

There lyes adjacent to this town, within the barbican there, a space of about 20 acres, which is covered every tide with the fea, and ships ride there and come to unlade at the keys of Plymouth, commonly called Sutton Poole; for the interest of the soil of these 30 acres being parcell of the port, an information of intrusion was, as directed out of the exchequer-chamber, preferred against the mayor and commonalty of Plymouth. The defendants pretended title to it as parcell of the town of Plymouth, and shewed usage to have had certain customs called land-leave, terrage, &c. But these referred to the shore rather than to the place in question. They alledged it was also within the limits of their charter, and that they exercise jurisdiction of their courts there; both which were admitted. But it was infifted upon, that the foil itself was excepted, as parcell of the castle of Trematon; and divers other evidences were infifted upon for the town. On the other fide it was shewed, that the king had used to have in right of his duchy in the place in question anchorage, busselage, fishing and the rents of fishers, and divers other port duties that favoured of the foil; as appeared by divers accounts of the duchy, divers records mentioning Pola de Sutton was parcell of Trematon, feveral leafes made by the king's progenitors of Aqua et Pola de Sutton, and fome to the town itself or to some in trust for them, and divers other weighty evidences for the propriety of the foil of Sutton Poole's being the very harbour itself, and belonging to Trematon; and accordingly a verdict given for the king, M. 16. Car. 2. in Scaccario, after seven years evidence.

I have mentioned this the rather; because,

- 1. Here the very interest of the port and water and soil and port duties themselves were claimed and recovered by the crown; not upon any prerogative title, for if it had been so it would have passed to the town of Plymouth, being within the precincts of their incorporation and grant, and then the exception of Trematon had not been available; but as parcell of and belonging to a manor that was formerly a subject's.
- 2. Though the king prima facie hath a right to ports of a royal franchise, yet the accession of this manor to the crown did not sever the interest of the port from the manor, no more than in case of a fair or market appendant by prescription; for if by the accession to the crown it had been divided from the castle or manor, it could not have passed without special words to the prince, as it plainly did here. As the port was by prescription parcell of the castle of Trematon, so it continued parcell notwithstanding the accession thereof to the crown by the death of the earl of Cornwall without issue; and it passed together with the castle by the general grant of it, as a leet or market, or any other parcell or appendant; and so not like those flowers of the crown which are rendered disappendant by accession to the crown, as waife, stray, &c. V. 9. R. Cas. Abbatis de Strata Marcella.

Many more inflances might be added of ports belonging in private manors to subjects by right of prescription; and some other will occur in the necessary series of the discourse; as the case of John de Britannia for a port claimed belonging to the manor of Little Yarmouth, and the case of the archbishop of York for his port of Beverley and Hull. But of both these and some others in the following chapter.

And thus much of ports by prescription.

Touching ports created by patent or charter, I mean the civil or legal port; for the natural fituation and conveniency of creeks and shores for arrival of ships is due to nature, and the supplements to industry.

Ports are erected two ways:

1st. In the king's own demesnes they may be erected barely by grant and proclamation; as the king usually erects a fair or market in his own thanor or town in this manner. Rex vic. Essex salutem. Quia volumus quòd de cetero in perpetuum sit umus portus communis pro arrivatione navium et exoneratione mercandisarum apud villam nostram; tibi præcipimus, quòd in pleno comitatu tuo proclamari facias, quòd de cetero in perpetuum omnes naves, cum bonis et mercandisis et aliis rebus in eisdem existentibus, liberè et quietè veniant apud prædist. ac ibidem bona et mercandisas suas exonerare et onerare possint sine impedimento nostro, bæredum vel successorum nostrorum, salvis nobis custumis et aliis bonis inde debitis. T. R.

If the liberty or erection of it be transferred or granted to another, it is done by patent or charter, and commonly also proclaimed in the county.

Vid. Pat. 1. E. 3. par. 1. m. 27. The exemplification of a charter of H. 2. whereby this liberty is granted in a few words, viz.

H. rex Anglia, &c. omnibus archiepiscopis, episcopis, &c. Sciatis me dedisse et concessisse Willielmo de Albani pincerna nostro, et baredibus suis bereditarie, manerium de Snetisbam cum duobus hundredis et dimidio de Tredebury et Smethden cum wrech et cum omnibus pertinentiis suis, et misteria de luna cum medietate sori et theoton et cum omnibus consuetudinibus et portum cum applicatione navium, et lestop et viam issus aqua et transitum, cum omnibus querelis, &c.

Cart. antiq. Cl. 7. H. 2. grants to the abbot of Whitby portum maris cum toll et team, et cum omnibus libertatibus et consuetudinibus ad portum maris pertiuentibus, viz. apud Whitby.

Vide ibidem D. D. n. 5. King William the first grants to the same abbey partum maris cum alga per totam suam terram. Alga is expounded to be wreccum. Vid. ibidem D. D. 26,

Car. antiq. fol. 17, king William the first confirms to the monks of Trinity Cantuar. portum de Sandwica, et omnes exitus et consuetudines en utrâq; parte aque, sicut ren Edmundus eos antea dedit. But nota, the archbishop recovered this port and the customs thereof upon the charter of king Knute.

In some, but especially in latter times, the charters granting new ports are more large and certain, expressing the bounds of the port.

The king may grant a port general, as before, or a restrained port, viz. for such as are of the see of the grantee, as in the case of Rosse before mentioned.

More shall be said concerning the erection of ports by patent, and the clauses of restriction that are sometimes in them, in the next chapter.

C A P. V.

Where the king may erect a port to the prejudice of another; and concerning restrictive clauses in charters to ports.

If the king erect a market by charter and grant it over, or if a man have a market by prescription, if the king erect another market at such a distance and at such a time as is a nuisance and prejudice to another market, the first grantee or owner of a market may have an action upon the case against

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the second grantee, if he hold that market; for as to him the patent is void, neither should it have been granted without an ad quod damnum precedent, and an inquisition returned that it is not ad damnum.

But it seems the law is otherwise in the case of a port. If A hath a port in B. and the king is pleased to erect a new port hard by that, which it may be is more convenient for merchants; tho' it be a damage to the first port, so that there be no obstruction of the water or otherwise, but that ships may if they will arrive at the former port, this it seems may be done. But then this new port must not be erected within the precincts of the former. The reason of the difference between it and a market are evident, viz. because that a port is of concernment to the whole trade of the kingdom, and also to the desence of the kingdom, the increase of shipping and mariners, and the increase of the kingdom, the increase of shipping and mariners, and the increase of the king's revenue, which is of a common good to the kingdom; and therefore he may erect a concurrent port though near another, so it be not within the proper limits of the former; as shall be shewn in the case of Hull and Yarmouth hereafter mentioned.

But, 1. it cannot be erected within the peculiar limits by charter or prefcription belonging to the former port, because that is part of the interest of the lord of the former port. Neither can the first port be obstructed or wholly defaced, or excluded for arrival of ships, but by act of parliament, as was done in the case of Melcombe translated to Poole. Rot. Parl. 11. H. 6. n. 30. And the reason is, because a publick interest is concerned; viz. the interest of the merchant at large, and the interest of the traders and mariners in that particular place or port, who have a right settled in them for the application, lading, and unlading of ships there.

2. If the king have an ancient port at A. and he erect another port hard by, with a generall prohibition that no man shall bring his goods or merchandizes by sea to any other port within five miles but to that which is newly erected, this prohibition is good, as against the king's interest in the former port, though the new port be erected within the precincts of the old; for he may derogate from his own simple interest by his own restriction. But this restriction is not good against the subjects of the port of A. who by usage had a right to come with their own shipping, and lade and unlade: and this although the goods might be customable goods; for the inhabitants of A. had an easement acquired to themselves by prescription.

3. But if the king erect by his own proclamation a port at A. where there was no arrival of ships before, and doth not grant it to another perfon, but keeps the interest in himself of this franchise; there it seems the king may dissolve this port, or erect another port, with a prohibition that

no ship shall arrive within such a distance, but at the new port: for there was no right of arrivage of any ships at the former harbour lodged in the inhabitants nor any other subject, but only permissive at the king's pleasure, and he may derogate from his own right.

- 4. But if a subject hath a port and arrival of ships at B. by prescription or charter, and afterwards the king erect a new port, within three or five miles within or without the precincts of the port of B. with a prohibition that no ships shall arrive within five miles of the new-erected port elsewhere; this prohibition or restriction is void, as against the interest of the owner of the port of B. or the inhabitants of B. because there was a former interest lodged in the owner and inhabitants of the port of B. which cannot be taken from them without their own consent, or by act of parliament.
- 5. But if a subject, or the king's fee-farmer, hath a port at R. by prefcription or charter, and the king grants that no ships shall arrive within
 five miles or such like compass, the king cannot within that precinct erect
 de novo a port to the prejudice of that port to which he had precedently
 granted this privilege. For the grant is good as against the king, and any
 interest derived from him after this grant: and although, as hath been said,
 without this restrictive clause, the king might have erected a port near to
 the former, which would have had this concurrent power or franchise, yet
 the king hath bound up his hands by his own charter; and by this inhibition, the precinct, to which this inhibition extends, is become as it were
 parcell of the precinct of the port.

These diversities will appear by the two cases following, which I shall put at large.

The case or rather history of the port of Great and Little Yarmouth, which makes good the most of the differences above expressed, was this:

The king had anciently the great port of Great Yarmouth, where his custom-house was kept, and his customes answered ever since there were customs, extending from Great Yarmouth to the sea. The king anciently granted this town and the port in point of franchise to the burgesses of Great Yarmouth at an ancient see-farm rent. Cart. antiq. K. 35. Cartaminde burgessibus per regem Johannem anno regni sui 9.

The king was likewise seized of the manor of Little Yarmouth, Iying between Great Yarmouth and the sea and within the precincts of the port of Great Yarmouth; of which manor of Little Yarmouth the town of Gorleston was parcell.

At the manor of Little Yarmouth there had been ever anciently a small port for arrival of ships, as well of forreigners as of the tenants; and

this feems to be belonging to the manor of Little Yarmouth, and the king had port duties there arifing to a confiderable fum.

King Edw. 1. being thus seized of this manor permitted John de Britannia, earl of Richmond, to hold this manor and port of Little Yarmouth at will.

The same king, during this possession of John de Britannia, viz.

granted to the burgesses of Great Yarmouth and their successors, quod omnia mercandisa et mercimonia quaeunque, sive sunt de piscibus sive de aliis rebus quibus unque, infra distum portum dista villa Magna Jernemuthe, in navibus aut batellis, seu alio modo adduci seu deserri contigerit, ut ibidem negotietur de eisdem, licità et apertà apud candem villam de Magna Jernemutha et non alibi infra portum pradistum discarcentur, et ibidem vendantur, absque aliquo forstallamento vel abrochiamento vel aliquo alio impedimento. This charter was granted without any antecedent writ of ad quod damnum, as was usual in cases of such extraordinary grants.

The town and little port of Little Yarmouth, being between Great Yarmouth and the fea and within the precincts of Great Yarmouth; shortly after the same king granted the manor of Little Yarmouth and Gorleston unto the same John de Britannia, and the heirs of his body, together with all fairs and markets and franchises, as fully and freely as John de Baylisse held the same; which manor and also the port thereunto belonging the

faid John de Bayliffe it seems formerly held.

After this grant there arose great suits between the burgesses of Great Yarmouth and John de Britannia and his tenants of Little Yarmouth and Gorleston, touching the privilege of this port; those of Great Yarmouth infisting upon it,

1st, That the whole port belonged to the farm of Great Yarmouth, and that Little Yarmouth was not indeed a port, but rather an usurpation and

forestall upon the port of Great Yarmouth.

2d. That if it were any such thing as a port, yet at the time of the charter granted by the king to those of Great Yarmouth, that merchandizes should be unladen at Great Yarmouth et non alibi, the manor and port of Little Yarmouth was in the king, and the ancestors of John de Britannia were then only tenants at will to the king, and the grant of the inheritance thereof to John de Britannia was subsequent to that charter of Great Yarmouth, and the king might well derogate from his own interest when the charter was granted; and consequently the interest of John de Bretaigne, being subsequent to the charter of Great Yarmouth, was subject to

and bound by the restriction and inhibition. And surely as to the interest of franchise that was claimed by John de Britannia, they said very true.

Upon this suits were commenced in the common-pleas against many of Little Yarmouth for forestalling the port of Great Yarmouth; which suits were long staid, because John de Bretaigne was not made party, and because the king's interest in reversion was concerned. And touching this matter cross petitions were preferred in the parliament of 8. E. 2. and inquisitions directed to be taken touching both interests, as appears Rot. Parl. 8. E. 2. m. 9. And though I do not find upon record what issue this had, yet it seems by the book of 2. E. 3. 7. per Claver, that in the parliament the charter of Great Yarmouth was affirmed per le councelle le roy; which is to be intended the legale concilium regis either in parliament or in chancery.

But yet John de Bretaigne did not rest satisfied with this determination, but petitioned again in parliament; setting forth his whole case, and that the men of Great Yarmouth by colour of their charter, gotten without any writt of ad quod damnum, had disturbed him of arrival of ships at Little Yarmouth.

This petition is fent by writ to the king's-bench; and after a kind of declaration upon the petition, the defendants, viz. those of Great Yarmouth, pleaded in effect thus:

1st. As to the king, they have his charter, that ships should be discharged ibi et non alibi.

2d. As to John de Bretaigne, that at the time of the grant made to them he was but tenant at will to the king, which is too feeble an estate to impeach their grant.

3d. Quant al gents de county nous diomus, que les ports sont al roy, et fair et market sont al roy, qui tiel chose purra graunt à que il voudra.

And upon this they demurred; and the case, for weight and difficulty, was again resumed into parliament. This appears by the book of 2. E. 3. 7, 8.

It lodged in the parliament for a long time; but afterwards it received a decision 23 Junii, anno 5. E. 3. by a bond of judgment or award, by the consent of the king and submission of parties, made by the bishop of Winton chancellor, Stoner and Cartwright justices, Robert Usford and Oliver Ingham, et alies de concilio; who, upon a full examination of the rights, claimes, and evidences of both parties, gave their judgment, which was confirmed by the king by patents under the great seal, and entered Rot. Pat. 5. E. 3. pt. 1. m. 1. which was not only an arbitrary determination, but in nature of judgment upon the meritts of the cause.

They first recite the charter of Great Yarmouth, the suits that had arisen in divers courts between them, the examinations and inquisitions that had been taken touching the right of either party, and then adjudge and determine as followeth:

1. Portum Jernemuthe unicum portum esse, et ad eandem villam Jernemuthe Mag-

næ in perpetuum declaraverunt et ordinaverunt.

2. Quòd naves omnes, quæcunque fuerint, infra portum seu aquam de Jernemuthe, cum bonis rebus seu mercandisis, de quibus custumæ ad opus domini regis bæredum et successorum suorum per collectores suos ad boc assignatos seu assignandos, sicut in aliis portubus regni in Anglia, levari seu capi debent, veniant apud dictam villam de Magnæ Jernemuthe, et ibidem custumas solvant; et apud eandem villam Magnæ Jernemuthe, et non alibi, infra portum prædictum discarcentur, et per manus bona res et mercandisas prædictas ducentium seu deferentium et ea ibidem vendere volentium, seu per manus servientium suorum, venditioni exponantur, et ibidem quibus voluerint liberè vendantur et emantur absque aliquo forestallamento vel abrochiamento, seu alio quovis impedimento; propriis navibus ipsorum bominum et tenentium dictarum villarum Parvæ Jernemuthe et Gorleston, bæredum et successorum suorum, tantummodo exceptis.

3. Quod naves dictarum villarum de Parvæ Jernemuthe et Gorleston, oneratæ cum bonis de quibus custumæ ut præfertur debitæ funt, ad eandem villam Magnæ Jernemuthe venient, et ibidem custumas suas solvant, quibus custumis ibidem persolutis, præfati bomines et tenentes distarum villarum Parvæ Fernemuthe et Gorleston, bæredes et successores sui, cum prædictis navibus suis, et servientes sui cum navibus illis, ad easdem villas Parvæ Jernemuthe et Gorleston pro voluntate sua redeant et ibidem discarcent, vel alibi eant quò voluerint, et de bonis rebus et mercandisis in eisdem navibus existentibus commodum suum facient, fine impedimento ipsorum burgensium bæredum et successorum suorum quorumcunque, et absque eo quod ad dictam villam Magnæ Jernemuthe contra voluntatem discarcare, seu alias custumas ipsorum burgensium Magna Jernemuthe bæredum seu successorum suorum solvere compellantur seu teneantur: ita tamen, quod fi iidem bomines et tenentes prædictarum villarum Parvæ Jernemuthe et Gorleston, bæredes vel successores dictas naves suas proprias ad prædictam villam Magnæ Jernemuthe gratis discarcare voluerint, tunc de navibus illis et bonis et rebus et mercandisis in eisdem existentibus alies custumas debitas et ustatas dictis burgensibus villæ Magnæ Jernemuthe, prout justum fuerit, solvant.

4. Quòd omnes aliæ naves bonis rebus et mercandisis quibuscunque, sive de allece sive de aliis piscibus, vel aliis rebus; de quibus bujusmodi custumæ ad opus ipsius regis bæredum et successorum suorum dari non debent, carcatæ infra distum

dictum portum et aquam venientes (propriis navibus ipsorum bominum et tenentium villarum Parvæ Jernemuthe et Gorleston, bæredum et successorum suorum, tantummodo exceptis) apud eandem villam Magnæ Jernemuthe, et non alibi discarcentur, et per manus bona res et mercandisas bujusmodi ducentium vel deserentium et ibidem vendere volentium, seu per manus servientium suorum, venditioni exponantur, et ibidem quibus voluerint liberè vendantur et emantur, absque aliquo forstallamento vel quovis alio impedimento.

5. Quod præfati bomines et tenentes dictarum villarum Parvæ Jernemuthe et Gorleston, bæredes et successores sui, proprias naves suas bonis rebus et mercandisis suis, sive de atlece, sive de aliis piscibus, et aliis rebus quibuscunque carcatas, de quibus bujusmodi custumæ dari non debent, ad prædittas villas Parvæ Jernemuthe et Gorleston, vel alibi pro voluntate sua discarcare, et bona res et mercandisas bujusmodi venditioni exponere, et alias commodum suum inde facere volebant, absque impedimento ipsorum burgensium et bæredum suorum quorumcunque : ita tamen quod iidem bomines et tenentes dictarum villarum Parvæ Jernemuthe et Gorleston, bæredes et successores sui, colcre premissorum naves aliorum suas proprias esse non advocent quovismodo in præjudicium dictorum burgenfium, beredum vel successorum suorum; quod si facerint, et inde modo legitimo convicti fuerint, bona tes et mercandisas in navibus sic advocatis seu advocandis inventa, si de assensu et voluntate dominorum eorundem bonorum rerum et mercandisarum advocata fuerint, domino regi et bæredibus suis scrisfacta remaneant; et si fine assensu bujusmodi dominorum tales onerationes fiant, nibilominus bujusmodi advocantes versus dictum dominum regem et bæredes suos graviter puniantur.

6. A provision for the liberties of the cinque ports, Norwich, and London, and a security provided for both places to keep the order.

This is the substance of this award and judgment, which was also afterwards enforced with a concurrent order of the king and his councill. Pat. 6. E. 3. par. 2. m. 19.

This determination I have thus at large transcribed, because it was most consonant to justice.

rst. The king's right for his customs is preserved; for indeed it is most plain, that Great Yarmouth was always the port where the king's customs were answered.

2. The right of the tenants and inhabitants of Little Yarmouth, which they had for their own shipping by constant usage, is prescribed, that for their customable goods they shall not be charged with the port-duties belonging to Great Yarmouth, and for goods not customable they shall not be enforced to bring them up.

3. The right of franchise for the lord of the port of Little Yarmouth is not at all taken care for, as in reference of ships of strangers; but the inhibition stands as to them; because the king had the port of Little Yarmouth when he granted the privilege to the port of Great Yarmouth, and he might derogate from his own interest.

But yet the burgesses of Great Yarmouth rested not here. They were a great and considerable port, and had great influence at court. Therefore in E. 3. a great precinct of the sea called Kirkley-road, being sive miles in the main sea, was annexed to the port of Great Yarmouth, and a new clause added to the charter, that no herring should be unladen or sold within seven miles of the port of Great Yarmouth during their sair, or in Kirkley-road; and it appears, that Hil. 49. E. 3. B. R. rot. 14. divers persons were impleaded for unlading and selling of herring, contrary to the tenor of those charters.

This alarmed the country; and thereupon, Rot. Parl. 50. E. 3. n. 49. the charter as to Kirkley-road is repealed by act of parliament, come chose fait countre common profit de realme, saving to them their other privileges granted or confirmed by the king or his progenitors with the clause de licet, &c. And afterwards in the same roll, n. 76. so much of the new grant as concerned the sale of herring within seven miles of Great Yarmouth at the time of their sair, is likewise repealed, saving their other liberties.

Rot. Parl. 2. R. 2. p. 2. n. 80. their franchises concerning Kirkley-road and the sale of herrings is again revived by act of parliament, according to the charter of king E. 3. notwithstanding that repeal, with some small qualification as to the sale of herring.

Rot. Parl. 4 R. 2. n. 39. Upon a new complaint concerning the revivall of those repealed liberties by act of parliament, a commission is to issue to enquire touching the inconveniencies.

But Rot. Parl. 10. R. 2. n. 23. the commons in the behalf of the town of Great Yarmouth defire, that the king in this parliament would grant and confirm unto the town the franchise and liberties granted to them by the king's progenitors, and confirmed by the king, according to the form and effect of them. The answer is, Le roy le voet, nient contristeant ascun repeale ent sait devant ces beures; purview touts voys, que touts manners de gents, ci bien aliens, come touts les liges de roy, qui viendront pur vender ou acheter herring illonque purront franchment et paissiblement vendre et acheter herring deins le dit vill et port, et mesme herring ent carrier à lour volunt durant le faire sans grievance ou disturbance de ascun. V. 31. E. 3. stat. 2. cap. 2.—35. E. 3.

And thus I take it the state of the liberties of the port of Great Yarmouth stands at this day upon the foot of a confirmation by act of parliament; whereby

whereby many of those liberties, which were not by law grantable by the bare strength of a patent or charter, yet having the strength and confirmation of parliament, stand good and effectual.

But this confirmation did not derogate from that agreement, that was fettled by the confent of the king and the parties concerned, of the 5th of E. 3. before mentioned. But I think at this day the port of Little Yarmouth and Gorleston are united unto the port of Great Yarmouth, and so all the business settled by that means, if not sufficiently settled before. Quere tamen, how that port of Little Yarmouth stands at this day?

And thus I have done with the narrative of the differences between Great Yarmouth and Little Yarmouth, and how they were fettled; and likewise the proceeding which the liberties of that port had; whereby it doth appear, that, although the king might grant a concurrent liberty of a port, yet he could not by charter without an act of parliament grant fuch restrictions that might be prejudicial to a liberty antecedently fettled by charter or prescription in others, nor restrain the liberty of buying and selling out of the precincts of a port without the help of an act of parliament. But how far forth there might have been restriction of some kind of commerce within the precincts of a port, shall be seen in the next chapter.

I come now to the narrative of the port of Kingston upon Hull, the application whereof will clear up and prove some other of these differences, which are expressed in the beginning of this chapter.

The case seems to be thus:

The town of Beverley was anciently part of the endowment of the archbishoprick of York from the time of king Athelstane, as appears Rot. Parl. 3. H. 5. par. 1. n. 48. where the old charter of king Athelstane is recited: " As free make I thee, as heart can wish or eye can see." This town bordering upon the fea had a small port belonging to it; and the archbishops also claimed a great portion of the mouth of Humber and the water of Hull, as belonging to that manor and port, viz. from a certain place anciently called Amet to the streams of Humber, the ancient kings of England granted to the archbishops prisas suas. And anciently by those words, they claimed only the first taste and buying of wines in the port of Hull, after the king's prisage was answered. But in process of time they came to claim the prifage itself, till judgment given against them in a que warranto. M. 6. E. 3. 51. Vide Clauf. 7. E. 3. par. 1. m. 17.

But befides this liberty, it feems, he claimed and also exercised some port-jurisdiction and privileges, as will appear in what follows, and kept a bailiff constantly in that water for the collecting and preserving of his rights and jurisdiction. K 2

The abbot of Meux was seized of a certain ville bordering upon the sea called Wyke; which being convenient for a port or haven, king E. r. took in by exchange and enlarged a watercourse adjoining to it called Sayer Creek, and made it a convenient port for the arrival of ships, and built a town there, which he called Kingston; and to this day is called Kingston upon Hull.

Between the port of Kingston upon Hull and the king's bailiffs there, and the archbishop of York and his bailiss of the port of Beverley and the water of Hull, there grew many differences; and in the time of E. 2. the town of Kingston procured a mandate from the king, ne qui mercatores cum bonis et mercandisis per aquam usque villam prædictam venientes, bona illa in navibus, antequam ad terram venerint, particulatim vendere non presument. Thereupon, Rot. Parl. 8. E. 2. m. 16. the archbishop complains in parliament, and defires, that that mandate should be revoked, as prejudicial to that right which he claimed in the water of Hull as belonging to him. And on the other fide the town of Hull complained against the archbishop's bailiff, as usurping in that water prejudicially to the king's port of Kingston. All that I find done was a mandate directed to the archbishop's bailiff, reciting both petitions, commanding the bailiffs of the archbishop, quod desistant super contentis in brevi illo juxta tenorem ejusdem, alioquin quod fit coram rege ad certum diem oftensari, quare non fecerint, quem diem rex dedit burgensibus antedistis. After this, in 6. E. 3. fol. 51. a quo warranto is fued against the archbishop, ut supra, for his claim of prisage of wines in aqua de Hull, and judgment given against him, ut supra oftenditur.

In 5 E. 3. the king by charter granted the borough of Kingston to the burgesses of Kingston, and their successors, at the yearly see-farm rent of 701. unà cum feriis mercatis libertatibus et aliis consuetudinibus, adeò integrè, sicut

dominus rex et progenitores sui burgum prædictum bactenus tenuerunt.

M. 44. E. 3. B. R. rot. 24. Ebor. The archbishop brought a special action of trespass against the burgesses of Kingston, eò quòd ipsi impediverunt ipsum tenere et percipere libertates privilegia tolneta et prosicua infra totam aquam suam de Hull juxta Kingston super Hull, à quodam loco vocato Amet usque stremes de Humber, viz. babere deodanda, cognitionem coram balliva suo in aqua prædissa de omnibus transgressionibus conventionibus et contractibus, inter mercatores et marinarios vel alios in eadem aqua, emergentibus, et excusationes et amerciamenta inde, et mensurare omnes mercandisas mensurabiles in aqua prædissa, scil. blada carbones et per bussellum ipsius archiepiscopi ad boc antiquitus deputat. capiend. pro qualibet nave naviculo seu batello bujusmodi mercandisas deserentibus, cum sic suerint mensurati, quatuor denarios; et quòd cum omnes mercatores, cujuscunque conditionis existant, per aquam prædistam liberè mercandisas

disas suas ille adducere possunt, et ibidem pacifice morari, quousque ea, cuicunque illa emere voluerint, vendiderunt per voluntatem suam, absque compositione alicujus mercandisas illas alibi ducentes, sine tolneto muragio aut alia consuetudine vel solutione alicui alio quam præsato archiepiscopo præstanda, sic ipsi vi et armis abstulerunt quendam batellum, scilicet, per ballivum suum, et deodand. Ec. et etiam impediverunt tenere placita conventionis in curia sua, et minati sunt ballivum suum, et officiarios suos impediverunt mensurare blada ostrea, Ec. per bussellum suum, et levare 4d. de qualibet nave, Ec. et compulerunt diversos mercatores illissolvere varias pecuniarum summas.

The defendants set forth and shew their grant in see-sarm of the 5. E. 3. and that the place, where the archbishop claimes these liberties and supposeth the trespass, is called Sayer Creek, which is parcell of the ville and within the borough of Kingston; et non intendunt quòd rege incansulto. The archbishop saith it is not parcell, et quòd villa pradista vocabatur le Wyke, et suit in seissia abbatis de Melsu, et quòd dominus Edwardus avus regis secit excambium cum pradisto abbate de pradistà villà de Wyke, simul cum aliis terris, ad quod tempus idem avus mist Petrum de Campana pro extentà inde saciend. et quòd in eadem extentà nibil compertum est de aqua predistà esse pertinentia dista villa, nec parcella ejusdem villa, &c. and so would counterplead the aide of the king's bailiss. The court awarded, quòd non procedatur rege inconsulto. Asterward a procedendo came. Then the mayor and burgesses plead as to the deodand, and they demand judgment, whether he shall make title without a charter; and as to the rest pleads, viz.

Quòd archiepiscopus est dominus villæ de Beverlaco, ad quam quidem villam pertinebat aliquo tempore quadam applicatio batellorum et aliorum bujusmodi minutorum vasorum, de quibus dominus archiepiscopus cepit custumas solneta, Gc. quia fuit dominus soli ex utrâque parte aque, et quòd naves applicabant ad quendam locum vocat. Grevale, et quod postquam dominus rex Edwardus avus excambiavit cum præfato abbate de Meux pro prædicta villa de Wyke, ædificavit in loco illo de vicariis et bercariis quandam villam ibidem et illam nominari fecit Kingston, infra quam villam est quidam cursus aqua, qui vocatur Sayer Creek, et est bunda inter diefam villam et villam de Drypoole, quem quidem cursum aquæ idem dominus rex avus admelioravit per remotionem pontium in eodem cursu existentium, et ibidem quendam portum fecit, et ad opus suum capere fecit diversas custumas et alia proficua de diversis bonis et mercandifis in eodem portu provenientibus, et postmodum per cartam suam fecit prædistam villam in liberum burgum, et bomines ejusdem ville liberos burgenses, et eis concessit diversas libertates, &c. Et dicunt, quod prædictus cursus aque et prædictus portus sunt pertinentes ad burgum prædictum et parcella burgi prædicti, et sunt idem locus ubi prædictus archiepiscopus modò queritur transgressiones prædictas fibs

sibi fieri; ac eò quòd archiepiscopus per ministros suos eapi secit infra portum prædictum diversa tolneta et custumas à diversis mercatoribus de mercandiss eorum ibidem exigerunt, per quod dicti mercatores cum mercandiss se retraxerunt in damnum et præjudicium libertatis burgi, ideò mayor et ballivi dictos ministros archiepiscopi impediverunt et non permisserunt ipsos capere proficua prædicta, prout his bene licuit, absque boc quòd issi impediverunt ministros archiepiscopi in aliquo alio loco quàm in Sayer Creek, &c.

The archbishop maintains, that he and his predecessors have been in seissina de prædisso loco de tempore cujus, &c. And the mayor and burgesses reply, quòd non suerint in seissina de tempore quo, et de boc ponunt se super

patriam; et archiepiscopus similiter.

Several continuances there are upon the roll, but no verdict given, as I can find. Possibly it was not prosecuted; for the port still enjoy their liberty. But upon this record these things are observable:

1. The original of one of the most eminent ports in England, viz.

Kingston upon Hull.

- 2. That a subject may by prescription and usage have a considerable precinct of a haven of the sea, as well in point of interest as jurisdiction; for otherwise an issue upon the fact would not have been taken: for as this was a business of great moment, and consequently much care taken both by the counsell of the king and also by the counsell of the town that no advantage should be lost; so the law and pleading were at this time in the greatest height that ever it was; and as much may be collected upon the pleading at this time as at any time, especially in a case of so much moment and importance.
- 3. That a subject by prescription and usage might have a port and arrival of vessels, as here the archbishop had at Beverley.
- 4. That yet the king might erect a port within a small distance from the port that was there before, and so settle a concurrent liberty of a port; for Kingston is but a small distance from Beverley.
- 5. That though the port of Beverley were but a small port for small vessels, which might perchance with more ease apply themselves at Kingston; though this erection of a new port hath a concurrent jurisdiction, as I may call it, with that of Beverley, yet it doth not, neither can it, take away that liberty, which by prescription was lodged both in the archbishop in point of franchise, and in the inhabitants of Beverley in point of easement and use
- 6. That although possibly there might some customable goods come up to Beverley in small vessells, yet without the help of an act of parlia-

ment

ment that could not be restrained by the erection of a new port by the

And herein the difference appears between this case and that of Yarmouth before. For in the case of Yarmouth the whole port is declared to be belonging to Great Yarmouth, as a port which was such time out of mind. But here the port of Kingston was puisse to that of Beverley, and so might not derogate from that right, which was anciently settled there, by any restriction.

But then it may be faid, what remedy had the king to fecure his cuftoms, if he could not conftrain the merchant to come to his port?

I answer.

- 1. Though he could not constrain the merchant from going to the port of Beverley, yet he might and did restrain him from selling by parcells upon the water within the port of Hull; for that, as shall be shewn, is against the privilege of a port, to be forestalled in such manner upon the water.
- 2. Though the port of Beyerley belonged to a subject in point of franchise and propriety, yet the king hath his jus regium in that port, in order to the securing of his customs, and might place a searcher there, or other officer, for the securing of his customs.
- 3. There was yet a harder tye upon the merchant; for if he landed or laded his goods, the custom not paid, there was a forfeiture. Therefore it concerned him to refort to that port where the king's officers of his customs were settled, there to pay or compound his customs, and obtain the warrant of the cocquet, which was only kept where the king had a collector and comptroller of his customs settled; and when he had that cocquet he was at liberty to land where he pleased, either at Kingston or Beverley; and by this means the king's duty was secured, and the right and liberty of the merchant and archbishop provided for and salved.

But as to the landing of goods inward the statute of 1. El. cap. 11. and as to lading of goods outward the statute of the staple while in force, did alter the liberties of ports exceedingly; whereof hereafter.

And thus much shall serve touching the creation and erection of ports.

I shall now descend to the consideration of those jura ports, or portatica.

C A P. VI.

mistirat od nog bisco deili man

Touching the threefold right in ports, viz. jus privatum, jus publicum, and jus regium.

A ND first of the jus privatum.

Having now confidered the original of sea-ports, I come to the several rights, that are to be found, and observed, and carefully distin-

guished in the confideration of publick sea-ports.

In all publick sea-ports in England, there are three kinds of rights that meet; and though they are distinct one from another, yet they consist one with another, whether the ports belong in point of franchise or propriety to the king or to a subject.

I. Jus privatum, interest of propriety or franchise.

II. Jus publicum, the common interest that all persons have to resort to or from publick ports, as publick sea-marts or markets, with their goods, and wares, and merchandizes.

III. Jus regium, or the right of superintendency and prerogative, that the king hath for the safety of the realm, or benefit of commerce, or

fecurity of his customs.

Of these severally and largely; and in this chapter I shall make an introduction at least into the jus privatum that is to be found in publick ports. And this jus privatum takes in these severall branches:

(1.) The right of the lord or owner of the port.

(2.) The right of those that have the propriety of the shore contiguous to the port.

(3.) The right of the town, or ville, that is the caput portus, and the inhabitants thereof.

(1.) As touching the first of these, the right of the lord of the port, we have before shewn, that, though of common right the king is prima facie the owner and lord of every publick sea-port, yet a subject may by charter or prescription be lord or owner of it; and therefore I shall not again repeat that matter.

This ownership, that the king prima facie hath and a subject may have, is of two kinds; and sometimes, and most commonly, they concur in the same person; but they may be divided, viz. the interest or ownership of

propriety, and the ownership of franchise.

The ownership of propriety is, where the king or common person by charter or prescription is the owner of the soil of a creek or haven where ships may safely arrive and come to the shore. This interest of propriety may, as hath been shewn, belong to a subject. But he hath not thereby the franchise of a port; neither can he so use or employ it, unless he hath had that liberty time out of mind or by the king's charter. Indeed he may bring thither for his own private use his own boats and vessels to carry off and bring in his own goods that are not customable, as sish, &c. but he may not use it as a publick port or admit forreigners unless in case of necessity, nor take toll or anchorage there; for that is sineable, either by presentment, or in a quo warranto, as hath been shewn.

2. The ownership of franchise. This is that, which gives the formality or denomination of a publick or lawful port, and becomes a free arrival of ships to lade and unlade their goods and merchandises; and this may be acquired by prescription, or by creation by the king either by proclamation or by charter.

Before any port is legally settled, although the propriety of the soil of a creek or harbour may belong to a subject or private person, yet the king hath his jus regium in that creek or harbour; and there is also a common liberty for any to come thither with boats and vessells as against all but the king.

And upon this account, though A. may have the propriety of a creek or harbour or navigable river, yet the king may grant there the liberty of a port to B. and so the interest of propriety and the interest of franchise several and divided. And in this no injury is at all done to A. for he hath what he had before, viz. the interest of the soil, and consequently the improvement of the shore and the liberty of sishing; and as the creek was free for any to pass in it against all but the king, for it was publici juris as to that matter before, so now the king takes off that restraint, and by his licence and charter makes it free for all to come and unlade.

But if A. hath the ripa or bank of the port, the king may not grant a liberty to unlade upon that bank or ripa without his confent, unless custom had made the liberty thereof free to all, as in many places it is; for that would be a prejudice to the private interest of A. which may not be taken from him without such consent.

And therefore, in the creation of a new port either by proclamation or charter, it hath been the course to secure the interest of the shore beforehand for the building of wharfs and keys for the application of the mer-Vol. I. chandize, and for the building of houses of receipt, as we see was done in the case of Hull.

So that it is possible, though not ordinary, that the interest of propriety and the interest of franchise may be divided; but it is usuall and best in conjunction.

Now from this jus dominii of property or franchise, or both, there arise several port-duties, sometimes called portatica, sometime tolls, sometime customs; and these are of two kinds, viz.

Such as are common or ordinary, and so almost incident to every owner-ship of a port:

Or fuch as are by special usage or prescription.

Touching those of the former fort such are,

Anchorage, or a prestation or toll for every anchor cast there; and somerimes though there be no anchor. And this doth in truth properly and prima facie arise from or in respect of the propriety of the soil, and is an evidence of it. But yet it is not so always, but grows due in respect of the franchise; for many times where the shore of a harbour belongs to a privatelord or owner, yet if at sull sea a ship lets sall an anchor upon that place, the king or lord of the port in point of franchise hath usually the anchorage; as I know it hath been used in the harbour of Plymouth, where yet some lords adjacent have the soil of the shore in some places to the low-water mark.

Ballassage of ships, or a toll for liberty to take up ballast out of the bottom, of the port. This ariseth from the propriety of the soil. The liberty in the Thames is granted by the king to Trinity-house without any toll for the same. And of this sort are also the ballast shores for the unlading of ballast, commonly built within the high-water mark, especially at Newcastle.

Touching the fecond, the port duties, that may be due to the Lord or owner of a port by custom or prescription, are various, and many times, differ in several ports; as namely,

Buffellage, such as appears to be claimed in the water of Hull. And such were usually answered to the king and dukes of Cornwall in the port of Plymouth.

Keelage, viz. for every vessell coming within the port a certain toll. Such was that custom due to the king, viz. de quolibet batello cum remigio quatuor denarios, et de minore navigio unum denarium; as appears in the record of the case between the town of Newcastle and the prior of Tinmouth, 20. E. 1. hereaster more at large set forth.

Certain other tolls, called, average, primage, and petty-loadning, mentioned in divers records. And of this kind are those duties that are taken in the

port of Exeter, under the king's grant of the fee-farm of that port and city, called petty customs, viz. certain finall rates upon merchandizes imported, which have been usually paid there. See the decree afferting the same, M. 15. C. I. in Scaccario, hereafter mentioned.

Leftage, that were port duties of goods unladen. M. 21. E. 1. C. B. rot. 89. Lestage in Lynn, of goods imported belonging to Thomas Hanvil.

Prifage, not that ancient prifage due by prerogative to the crown, whereof hereafter, but certain customary prifes of fish, wines, wood, rushes, &c.-Thus in the port of Newcastle it appears by the record before mentioned, the king used to have of every ship laden with herrings, 100 herrings freely; of a ship laden with haddocks, 100 haddocks for fix-pence; of every ship laden with some other kind of fish, the best fish for a penny .- And these prises were often taken by the constables of the king's castles in those ports, in right of the king, or by some title derived under him by grant or prescription. Vide H. 12. E. 1. B. R. rot. 2. Briffoll, an inquisition setting forth, quot friscos pisces quilibet batellus applicans apud Bristoll cum friscis piscibus debet reddere constabulario castri Bristoll. Vide Communia Mich. 2. E. 3. in Scaccario. - The constable of the Tower of London used to take to the use of the king of every fisher-boat of London fishing for spratts in Thames, fix shillings and eightpence, of every foreign fishing-boat eight shillings; and he used to take for his own-fee, of every veffel laden with fmelts coming by the poftern gate of the Tower 100 smelts for a penny; and so for ships laden with oysters, herring, firewood, rushes, &c. a certain proportion set forth in the record. Vide fat. Magna Cart. cap. 19. 36. E. 3. cap. 2. &c.

And these kinds of duties were sometimes called tolls, sometimes confuetudines; touching which, when they were in the king's hand, not lodged in a subject by grant or prescription, the king by his charter might, and often did grant discharges, as well as of other inland tolls. But when they were before lodged in a subject by grant or prescription, the king could not discharge these by his charter; and by this we may the better understand those ancient charters. Vide Cart. Antig. E. E. n. 8. the grant of R. 1. to the abbots of Peterborough to be quit of all toll in foris et nundinis et omni transita pontium maris et portuum maris: the like, ibidem, L. 11. 26. by Hen. 2. to the abbot de loco Sancti Edmundi, to be quit of toll in omnibus foris et nundinis, et in omni transitu pontium vidrum et maris per totum regnum; and in some cases to be quit de omnibus consuctudinibus, in tide and of tide, by strand and by stream, &c. which are not intended of customs properly so called, which is the business of the third part of this book.

But of those customary tolls, vide fir John Davis's Reports, fo. 8. concerning the latitude of the word coustuma and consultated in the king's grant.

And thus much shall serve touching the interest of propriety and franchise in the very port, viz. that part of the sea wherein ships come to unlade their goods.

(2d.) There is a second interest considerable, viz. the interest of the shore adjacent to the port. Though it is true it is rare to find any port, but that the king or the owner of the port in point of franchise hath such a convenient portion of the shore and land adjacent, where wharfs and keys and warehouses may be built, for the lading and unlading and safe-guard of merchandizes; yet the interests are and may be divided, however they are several in their nature; and the duties that arise by reason of the goods when unladen and laid on shore, or in relation thereunto, are different from those that have been before spoken of. And many times it falls out, that such a place within a port may be of great conveniency to make a common key or wharf where the propriety of the soil may belong to a subject, whereby either his interest must be bought in by the lord of the port, or he must have those benefits that may arise by the taking or landing of merchandize.

Now touching the rights that happen by reason of this interest in the shore, they are very many and various, according to the various concernes; unto which they relate.

These shore-duties, as I may call them, will be considerable,

In the natures and names of the things themselves ::

In the title or means whereby they grow due.

Touching the former of these, the names and natures of the duties themfelves, they are various.

- r. Towage, or something due for the liberty of vessels up to the port.
- 2. Moreage, a fum due by usage for moreing or fastening of ships to
- 3. Terrage, for the necessary unlading of goods before they come up to

And of these I shall deliver at large, when I come to the consideration of jus publicum.

- 4. Cranage, or duty for the taking up or lading on a ship any goods or merchandize by that engine.
- 5. Wharfage or keyage, a toll or duty for the pitching or lodging of goods. upon a wharf.
 - 6. Housellage, or a toll for the use or liberty of ware-house room.
 - 7. Tolls, or duties for weighing merchandize; which is,

Either:

Either Tronage, which was the king's duty for the weighing of wooll at the king's beam in all ports wherein woolls were exported; whereof at large when we come to the customs:

Or Pefage, which was for the weighing of other merchandize of

averdupoife. Of this also when we come to the customs.

8. Measurage, which was a toll due for the use of a common bushell or other instrument to measure dry or wet goods imported or exported.

Many more of this nature we may find, some whereof are mentioned Rot. Parl. 50. E. 3. n. 163. where a petition is against inhancing of them.

Thus much shall serve concerning the duties themselves, their names and natures.

Now concerning the title whereby they may accrue, which is of three kinds :

First, Convention or agreement:

Secondly, Prescription or custom:

Thirdly, Charter or grant.

First, touching conventional duties, and how and where they may be taken, I shall deliver in these ensuing positions.

- 1. As we have before observed, no man can erect a new publick port without the king's licence; neither can he take out of a port any certain constant rates for the lading of merchandizes, but he may make particular agreements with every one that comes there by his consent to land his goods. This was resolved, P. 11. Car. B. R. in Morgan's case, for taking two-pence for every barrel of beer landed at Crockham-pill, for which constant taking he was fined 100 marks.
- 2. A man for his own private advantage may in a port town fet up a wharf or crane, and may take what rates he and his customers can agree for cranage, wharfage, housellage, pesage; for he doth no more than is lawful for any man to do, viz. makes the most of his own. And such are coalwharfs, and wood-wharfs, and timber-wharfs, in the port of London and some other ports. But such wharfs cannot receive eustomable goods against the provision of the statute of 1. Eliz. cap. 17.1
- that come to that port must come and unlade or lade their goods as for the purpose, because they are the wharfs only licensed by the queen, according to the statute of 1. El. cap. 11. or because there is no other wharf in that port, as it may fall out where a port is newly erected; in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, pesage, &c. neither can they be inhanced to an immoderate rate, but the duties must be reasonable and moderate, though settled by the king's licence or charter. For now the wharf and crane and other conveniences are affected with a pub-

lick interest, and they cease to be juris privati only; as if a man set out a street in new building on his own land, it is now no longer bare private interest, but it is affected with a publick interest.

4. But in that case the king may limit by his charter and license him to take reasonable tolls, though it be a new port or wharf, and made publick; because he is to be at the charge to maintain and repair it, and find those

conveniencies that are fit for it, as cranes and weights.

Secondly, the duties that arise upon ripa or wharf by prescription.—Thus in many and almost all ancient ports are the duties and tolls above-mentioned, viz. cranage, wharfage, housellage, &c. which are settled by long usage and prescription; and the sums, which are to be paid for the same, are limited; and sometimes those remain in the king or lord of the port, sometimes and most commonly granted to the towns that are the capita portuum, and they become parcell of their farm, as it is at this day in Newcastle, Kingston upon Hull, and other places. Vid, stat. 33. He 8. cap. 33. pro consulutionibus in Hull.

All that I shall need to add concerning this is, that the duties settled in ancient ports by prescription ought not to be inhanced, nor enlarged beyond their usual rate or number; for it is part of that jus publicum that is vested in the commonalty, to have their access thither as freely as formerly was used. Vide Rot. Parl. 50. E. 3. u. 163. Upon complaint of the inhancing of ancient tolls, and the accroaching of new in the port of London by the king's officers, the answer is, Il pleist au roy que les auncient custumes y soient tenus, et nul nevel imposition y soit mise. And such an accroachment is punishable upon indictment by sine and imprisonment; for it was one of the articles in Eyre, as hath been formerly said, de novis consuetudinibus levatis in regno, sive in terra sive in aqua, et quis eos levaverit et ubi.

Thirdly, the third fort of port-duties are by patent, which is accidentall, occasional and temporary; as where there is a necessity to build a new key, or to repair the old, it hath been usuall for the kings of England to grant temporary and reasonable tolls of all ships and merchandizes coming into the port, expressing the particular sums that are to be taken in the patent: and the like hath been done for the building of a new wall about the port town, or the repairing of the old, called murage; for in those, and in cases of the like nature, the subject hath quid pro qua; and it is to cease, when the business is done; and infinite instances of this nature might be given in all ages.

(3.) I come to the jus privatum of the caput portus, or town which is the port-town. And here I shall not take in those liberties which a port-town may acquire, either by the king's charter, or by prescription, or by act of parliament, for these may be various as well in port-towns as inland towns;

But those liberties of rights that seem incident to a port-town qua tale. And some indeed are common to every port-town, which is this; that every port-town, if they be able, should furnish the provisions for the ships and mariners that come to that port; and that there should be no forestalling of the port, either by interloping with provisions, or by new buildings between them and the sea, which may withdraw the resort of mariners from the port-town, and possibly also deceive the king of his customes: and I shall proceed with instances herein.

Pat. 14. E. 1. m. 22. Pro bomnibus mercatoribus de Ravenfroad.

Rex omnibus ad quos, salutem. Quia accepimus per inquisitionem, quam per dilectum et sidelem nostrum Thomam de N. escaetorem nostrum ultra Trentam sieri fecimus, quòd homines mercatores nostri de Ravensroad benè et sufficientèr possunt invenire onni tempore anni, omnibus et singulis ad villam illam consuentibus, honum panem et bonam eervisiam secundum assisam nostram inde provisam, et hoc paratisunt facere, et nulli de esse; et quòd extranci, in prædictà villà de Ravensroad non residentes, cupiditate ducti, panem et cervisiam in navibus ad vendendum ibidem adducunt in ipsorum hominum et mercatorum nostrorum dispendium, et status sui et villæ prædictæ deteriorationem maximam, et contra consuetudinem hujusmodi villarum super mare scituatarum: nos, indemnitati hominum et mercatorum nostrorum provideri volentes in hâc parte, concessimus eis, quòd nullus extraneus panem vel cervisiam in portu vel in mari juxta prædictam villam de Ravensroad contra voluntatem hominum mercatorum nostrorum prædictorum vendere presumat; et ideò vobis mandamus, quòd aliter contra voluntatem hominum et mercatorum prædictorum, quantum in vobis est, sieri non permittatis. T. R.

But this perchance may be too hard; and indeed it is not fafe to conclude every thing to be lawful, which may be found in writs and commissions of like nature in former or after times.

I come therefore to judicial records; and begin with that notable case, which I have had occasion formerly to mention, viz. the suit between the town of Newcastle, in the behalf of the king and themselves against the prior of Tinmouth, which began in parliament the 20. E. 1. and was finally adjudged H. 20. E. 1. B. R.

It appears by the Charta Antiqua G. 22. that king John in the 14th year of his reign, granted to his men of Newcastle, at the see-farm rent of 100 l. salvis vobis redditibus et priss et assistant in portu ejusdem villa.

The prior of Tinmouth his land lay between the town of Newcastle and the sea.

The burgesses of Newcastle, in the behalf of the king and themselves, complain in the parliament 19. E.3. wherein they set forth,

1. Quòd rex babet et babere debet totum portum in aqua de Tine, à mari usque ad locum qui dicitur Hidewin streames ita libere, quod non licet alicui carcare vel discarcare mercandisas aliquas, nec forestallum facere de bujusmodi mercandisis, emendo vel vendendo eadem nisi infra villam Novi Castri, ita quòd rex tolneta prisas et custumas et alia ibidem spettantia percipere possit.

2. That the prior having his lands between Newcastle and the sea, ships did lade and unlade at the prior's lands, where there was no port before, and

fo forestalled the king's ports.

3. That the king had common ovens or bake-houses at Newcastle, where all vendible bread was to be baked, and not elsewhere.

4. That yet the prior had erected a new town at Sheles, between Newcastle and the sea, and there had common brewers and bakers, whereby the king bost his furnage.

5. That the king had divers ancient prisages of fish and wine at New-

the first a self of their

castle.

6. That the prior causing lading and unlading of ships at Sheles, the king loseth his prisage.

7. That the prior had erected common ovens at Sheles, whereby those that were used to come to Newcastle to buy their provisions in emendationem ejustem ville, came not, but supplied themselves at Sheles.

8. That the prior kept a market at Sheles, and shambles, whereby the

country and mariners refort thither for provisions, and buy and fell.

9. That there were certain monks at Tinmouth, that were traders in leather, and laded ships at Sheles for exportation thereof.

ninerum in aquá de Tine, ascendendo à mari ad Novum Castrum, et descendendo ad mare, liberè per terras dominorum quorumcunque; prædictus prior non permittit bujusmodi transitum facere volentes terras suas ingredi; et cùm sortè ingressi fuerint, compellit eos reverti et in aquam profundam gradari, unde vix cum vità sua evadunt; whereby merchants and others withdraw themselves from the town, and do not bring up coals and wood and other things, to the prejudice of the town and damage of the king, who is used to have of every great vessell with oars four-pence, of every lesser a penny.

To this complaint there are divers pleas and replications; but the short is, The prior as to any market or port disclaimed, and thereupon judgment given, intibitum est ei, nè mercatum vel portum in locis pradictis de catero teneat, imò quòd omnimoda signa quacunque suerint tam portus quam mercati in locis pradictis prosternere faciat et diruere.

As to divers other matters in question, he makes title and excuses; whereunto replication was made by the king's attorney, and inquisitions directed

directed to be taken, and were taken and returned and sent into the king's bench. Thus far the record of the parliament-book of E. 1. goes. But Hil. 20. E. 1. B. Regis, Rot. 59. Northumb. upon the inquisitions thus transmitted judgment is given, viz.

Quòd dominus rex babebit totum portum à mari usque ad quendam locum vocat. Hidenam streames, et quòd nullus in portu illo possit carcare vel discarcare sine licentid domini regis vel ballivorum suorum, et quòd portus ille remaneat domino regi et baredibus suis liberè cum prisis et towagio et omnibus libertatibus ad portum spectantibus: ità quòd neque apud Sheles neque apud Tynmuth naves carcentur et wreccum maris, &c.

Yet it seems for all this the prior did continue his usurpations; and thereupon in the parliament of 33. E. 1. the burgesses of Newcastle make a new
complaint, viz. That the prior had gotten a fair for sisteen days at Tinmouth,
to the prejudice of Newcastle; that goods were laden and unladen at Tinmouth; that bread wine and beer was there sold, to the prejudice of the town
and damage of the king, notwithstanding the former judgment. And thereupon both parties are adjourned into the king's bench for a farther
remedy.

This great record, and the folemnity of the proceeding therein, is of great weight and authority to evince, that it is against the liberty of a port to have any victualling-houses erected between a port-town and the sea without the port-town, and within the precincts of the port; for it is a forestalling of the port-town, a loss to them in their trade, a damage and prejudice to the king in his customs.

And confonant to this was that folemn decree, that passed in the exchequer-chamber, which is entered in the book of orders, T. 11. Car. 1. fol. 202. between the city of Bristol plaintiff, and Richard Morgan and others defendants. Upon the whole matter, the case by the decree is thus stated, viz.—That the city of Bristol is an ancient corporation, and pays a fee-farm rent to the crown. - That the trade of merchandize and repair of shipping to Bristol is of general use, advanceth the king's customs, and the ships men and mariners thereby maintained is a great safety to the kingdom.—That purpressures erections and encroachments upon navigable rivers, to the damage annoyance or forestalling of any of his majesty's ports, have always by judgment upon complaint been abated and removed; and instances given H. 3. in the case of Bristol, 14. E. 1. in the case of Ravenfroad, 20. E. 1. the case of the men of Newcastle and the prior of Tinmouth, in 2. Car. 1. between the town of Newcastle, P. 5. Car. 1. in. the exchequer-chamber between the town of Newcastle and Johnson for VOL. I. erections

erections upon the river of Tyne to the prejudice of towage. That it appeared by the defendants answer, that the houses were erected at Crockhampill for feamen to dwell in .- That those erections were between the sea and the town of Bristol, where all entries were made, and the king's customs received .- That it is probable thereby the king's customs are stolen, and merchants goods embezzled; and it is confessed, that the inhabitants of those houses sell ale beer and other victuals in great abundance; which the court declares to be a manifest damage to the port and town of Bristol, and is against the custom of maritime and coast towns, as by the record of Ravenfroad appears.—That it appears by proof, that divers of the houses are built too near the river of Avon; that the water flows up to the walls of the faid houses; that men and mariners, in haleing their ships into and out of the pill, are constrained to go between the houses and inclofures and the river in mudd and mire at high-spring tide, which is not fufferable; that the port and river is much straitened and annoyed thereby; that men and mariners are drawn to idleness and intemperance by these, and so to neglect their labours, whereby a ship may be lost, and the port thereby choaked.—That it also appeared in proof, that the plaintiffs. had used to fix posts at Crockham-pill for moreing of ships; and when those decayed, they have fixed more at the pill, and elsewhere upon the river, at their wills, without contradiction, until the defendant Morgan opposed. it lately.

It is therefore adjudged and decreed,

1. That but one house for the ferry or passage-boat shall be permitted to stand at Crockham-pill, as hath been formerly used, and no more.

2. That all other houses, cottages, and inclosures, made or procured by the defendants, or the father of Morgan, be abated and demolished at the charges of the defendants.

3. That no new buildings or inclosures be made there; but the place shall be kept open and free for common and publick uses, as hath been here-tofore accustomed.

4. That the plaintiffs and all others reforting to the port of Bristol shall have free liberty for moreing and haleing of their ships, as they have formerly used, and may pitch posts at any of the said harbours, pills, places, and grounds, at their will and pleasure, for the moreing of ships and barques, as formerly they have usually done.

I have recited this case at large; because it is useful to that which I have now in hand, and will be necessary to be reminded in what follows.

Upon

Upon these two records these things are to be noted and collected, viz.

1. De fasto Crockham-pill, and that part of Tyne to which Sheles was contiguous, was within the respective ports of Bristol and Newcastle, and between the port-town and the sea.

2. That an erection of houses, or places of receipt for mariners, contiguous or near to the water of that port, between the port and the sea, is an injury to the port-town, a forestalling of it, and a prejudice to the customs.

3. That it may therefore be demolished by decree or judgment. But if it had not had these circumstances, it had been otherwise, viz.

been demolished; and upon that account the buildings below the town do continue, and are not within the reasons of these judgments.

2. If it had been built above the port, it should not have been subject to such a judgment; for it is in that case no forestall between the port and the sea, and so no nusance to the port-town as a port-town.

3. If the building had been out of the extent of the port, as if it had been built three or four miles below the pill, it had not been within the reafon of either of these judgments, nor might it have been demolished, for it could not be a nusance to the port.

This decree, it is true, was pronounced; but the buildings continue, possibly upon some composition between the parties, or by the proviso for cottages near the sea, in the stat. 27. Eliz. And thus much for the jus privatum,

1st. Of the lords of ports, 2dly. Of the shore contiguous to the port, 3dly. Of the town or caput portus.

C A P VII

Concerning the jus publicum of ports and barbours.

BRACTON, lib. I. cap. 12. s. 6. tells us, quòd publica sunt omnia flumina et portus, ideoque jus piscandi omnibus commune est in portu et in sluminibus. Riparum etiam usus publicus est jure gentium, sicut ipsius sluminis. Itaque naves ad eas applicare, sunes arboribus ibi natis religare, onus aliquod in iis reponere cuivis liberum est, sicut per ipsium sluvium navigare. Sed proprietas earum illorum est M 2

quorum prediis adberent, et eddem de causa arbores in eisdem nata eorundem sunt. Sed boc intelligendum est de staminibus perennibus; quia temporalia possunt esse privata. As concerning the publick right of common rivers, whether fresh or salt, enough has been said in the First Part. As touching ports; and the publick right of them, Bracton saith true; with this allay, that hath been before observed, that the law of England doth thus far abridge that common liberty of ports, that no port can be erected without the licence or charter of the king, or that which presumes and supplies it, viz. custom and prescription.

But when a port is fixed or fettled by such means, though the soil and franchise or dominion thereof prima facie be in the king, or by derivation from him in a subject; yet that jus privatum is cloathed and superinduced with a jus publicum, wherein both natives and foreigners in peace with this kingdom are interested, by reason of common commerce trade and intercourse. And this publick right consists, among other things, principally in these:

r. They ought to be free and open for subjects and foreigners, to come and go with their merchandize.—But touching this, and how far, and by what means, and upon what occasion there may be interdictions in this kind, shall be at large confidered in the following chapters.

2. There ought to be no new tolls or charges imposed upon them without fufficient warrant, nor the old inhanced; whereof before in the precedent chapter.

3. They ought to be preserved from impediments and nusances that may hinder or amony the access or abode or recess of ships, and vessels, and seamen, or the unlading or relading of goods. And touching this principally in this chapter.

Nusances of ports are of two kinds.

I. Such as are immediately only nusances to the private concernment of the lord of the franchise of the town that is caput portus, though possibly in consequence may damnify the publick. And such is that of building houses of receipt between the port-town and the sea; whereof in the former chapter. And because this doth immediately only concern a private interest, it may be dispensed with and continued by consent of the king and parties interested, as many of those interloping buildings between the port-town and the sea are continued; and namely, that of Crockham-pill, which is continued to this day, upon some terms possibly between the city and the owners of the houses.—These are not so much common nusances as purpressures, which were warrantable by the king; at least with the consent of the port-town, which was immediately interested in the consequence of them.

II. Such

go, or flay at ports. I will give instances of some.

- the port, or throwing out of filth or traff into the port, whereby it is choaked, angulad ad or bird and year or energy and an angular angu
- (2.) Decays of the wharfs keys and piers, which are for the landing of merchandize and fafe-guard of shipping.
- (3.) The leaving of anchors in the port without buoys or marks, whereby thips or vessels may strike against them and be spoiled.

(4.) The building of new wears or inhancing of old, whereby navigation or passage of vessels is obstructed.

(5.) The straitening of the port, by building too far into the water, where thips or vessels might have formerly ridden; for it is to be observed, that nufance or not nufance in fuch case is a question of fact. It is not therefore every building below the high-water mark, nor every building below the low-water mark, is ipfo fatto in law a nulance. For that would destroy all the keys that are in all the ports in England. For they are all built below the high-water mark; for otherwise vessels could not come at them to unlade; and some are built below the low-water mark. And it would be impossible for the king to license the building of a new wharf or key, whereof there are a thousand instances, if iplo fallo it were a common nusance, because it straitens the port, for the king cannot license a common nusance. Nay, in many cases it is an advantage to a port to keep in the sea-water from diffusing at large; and the water may flow in shallows, where it is impossible for veffels to ride. Indeed, where the foil is the king's, the building below the high-water mark is a purpresture, an inercachment and intrusion upon the king's foil, which he may either demolish or feize, or arent at his pleasure; but it is not ipso facto a common nusance, unless indeed it be a damage to the port and navigation. In the case therefore of building within the extent of a port in or near the water, whether it be a nufance or not is qualtio fatti, and to be determined by a jury upon evidence, and not qualtio welf, because it well explains the partire of this liberty of cowage kingle

jacent, if it hath been so anciently used, without paying any thing for it. Or if it be a new port, yet it seems, the moreing of ships being for the general good of commerce, it must be suffered upon reasonable amends. See more of this in the next.

(7.) Towage or haleing of thips or vessels up or down a river or creek, to or from the port-town; and of this somewhat largely.—

1. It is clear by the judgment in the case of Tinmouth, and the decree in the case of Bristol, above cited in the former chapter, that where this hath been customably used without paying any thing for it, such a custom is good, and ought to be allowed; for it is pro bono publico; and also it is but an easement, and therefore may be said to be belonging to passengers or inhabitants, or generally to all comers through the port. Look at the book of 8. E. 4. 18. for the custom of Kent, for fishermen to dry their nets upon the land, though it be the foil of private men.-Pat. B. R. 2. part. 1. m. 83. Rex omnibus, &c. Ex clamofa infinuatione totius comitatus Nottingham accepimus, quòd cum diversi bomines ducentes diversa vistualia et mercandisas cum navibus et batellis per aquam de Trent, in fingulis placeis inter villas de Hull et Nottingham, totis temporibus retroactis, venire per eandem aquam, velando et navigando libere redire, pro parvitate aque naves et batellos. suos per lineas et cordas super terram ex utrâque parte aque predicte trabere consueverunt, que quidem aqua est riparia vestra, et illo jure commune passagium pro cariogio es aliis necessariis in eadem aqua faciend, pro quibuscunque bominibus ibidem transcuntibus, &c. quidam bomines, babentes terras suas adjacentes dicta riparia en utraque parte aqua pradicta, diversos fines et redemptiones ac vadia fingulis navibus et batellis ibidem venientibus ante boc tempus ceperunt, et indies capere non desistunt, per quod quamplures bujusmodi bomines illuc venire dissolerunt, et adbuc differunt ; ita quòd diversa victualia ad magnam caristiam devenerunt, et quotidie deveniunt in villa ac castro Nottingbam ad tolius comitatus præditti damnum non modicum gravamen et depressionem manifestam: nos, bujusmodi damna gravissma et depressiones vitare et communi utilitate populi nostri circumcunque prospicere volentes, vobis omnibus et singulis districtus, quo poterimus, sub forisfactura omnium que nobis forisfacere potestis, inbibemus. ne aliquos vietularios, vietualia et alias mercandisas inter villas de Hull et Nottingham per aquam prædictam per vestros districtus in navibus seu batellis ducentes, impediatis, molestetis, seu in aliquo per fines redemptiones vadia vel alia gravamina contra justitiam inquietetis ullo modo, et boc sub forisfactura pradicta nullatenus omittatis .- I have inserted the whole writ, because it well explains the nature of this liberty of towage; and accordingly, by the statute of the 23, H. 8. cap. 12. towage upon the river of Severn is declared to be free by custom time out of mind used, and a punishment enacted against the exactors of toll or taxes for the allowing of towage.

2. But yet we must needs say, that without a custom there may be something required as a recompence by the owner of the soil over which they go. But yet, 1. They ought to have a liberty of paying for it. 2. They ought to pay what is reasonable, and no excessive exaction ought to be taken

taken for such permission; for it is for the public good, and therefore ought not to be wholly obstructed; and yet there is a private interest concerned, and therefore de jure communi without a special custom to the contrary, the owner of the soil ought to receive compensation for his damage. And this appears by the statute of the 19. H. 7. cap. 18. for the free passage of boats in Severn, and the proviso therein for the reasonable satisfaction of the owners adjacent; but by the subsequent statute of 23. H. 8. it is declared and enacted the passage shall be free without compensation.

(8.) A port or publick passage may not be obstructed; nay, if it begins to be filted or stopped, yet it must be scoured, and cannot be wholly dammed or filled up, although another cut be made as beneficial as the former, without an inquisition by writ of ad quod damnum sinding it to be no damage to the publick, and the king's licence thereupon obtained; as appears by the writ of ad quod damnum cited formerly to another purpose. Register 252.

These be some of those many nusances which may happen in ports.—
I proceed now to set down the means whereby they may be prevented or remedied, appointed or allowed by law.

And these provisions are of two kinds :

L. By the common law:

II. By particular acts of parliament.

I. As to the provisions by the common law we are to observe, that as the common law hath intrusted the king with the patronage and protection of the jura publica, as highways, publick rivers, ports of the sea, and the like; so the seare of preventing and reforming of publick nusances therein is left to him, and his courts of justice, the prosecutions for them are in his name, and the sines for the defects or annoyances in them are part of his revenue.

By the common law the course touching nusances in ports is of two kinds, provisional or remedial.

(1.) The provisional courses to prevent these nusances.

1. The king did many times iffue out of the court of chancery mandates to the mayor and chief officers of ports to take care against them. Vide in Cl. 46. E. 3. m. 14. a mandate to the mayor and sheriffs of London, that fimus simaria et alia nociva ne proficiantur in rivum Thamisiae, sed amoveantur in emendationem portis.

2. The king granted upon occasion tolls for the repair of keys in ports, called keyagium, viz. certain rates of all forts of merchandize.

(2.) Remedial; and this may be done,

1. By the ports damnified.—Any man may justify the removal of a common nusance, either at land or by water, because every man is concerned

in it. Vide Mich. 13. 14. E. 1. B. R. rot. 10. The burgeffes of Southampton justify the throwing down of a wear belonging to the abbot of Tichford in a creek of the sea, quia levata fuit ad nocumentum domini regis et ville Southampton, et quod butelli et naves impediantur quominus venire possunt ad portum ville; and verdict and judgment for the desendant: but because this many times occasions tumults and disorders, the best way to reform public nusances is by the ordinary courts of justice.

2. By the king's courts. Lay od haffans has borden sist . 3. H . . .

indictment or prefentment in the king's courts, as in leets, turns, seffions of the peace, over and terminer; and if the nusance be where the king's bench is sitting, then by presentment there; if in another county, then upon the presentment removed by certiorari into the king's bench, and proceeding thereupon, or by information by the king in any of his courts at Westminster.—By the book of 8. E. 2. Corone, every arm or creek of the sea within the points of the land, where a man may discern clearly from side to side, is within the body of the county. Yet the admiral hath used at least a concurrent jurisdiction in many such creeks and arms of the sea, up to the first bridges as to matter of nusances, upon a mistake perchance of the words les pounts in the printed statute of 16. R. 2. c. 3. whereas some read it points.

2. If not within the body of the county, but upon the high sea, then these nusances are rectified and redressed by the court of admiralty excepsion, as appears by the old articles of the admiralty in libro nigral admiralitatis.

II. Touching provisions particularly made by act of parliament for particular ports, see the statutes of 23. H. 8. c. 8. & 27. H. 8 c. 23. for the preservation of the ports in Devon and Cornwall, principally in reference to damages that may occur by tin-works; the statutes of 4. H. 7. c. 15. & 27. H. 8. c. 18. for avoiding and reforming nusances in the port of London and river of Thames; 6. H. 8. c. 17. for the river of Canterbury; 23. Eliz. c. 6. &c. for Dover haven; 2. & 3. E. 6. c. 30. for the port of Rye and Winchelsea; 34. 35. H. 8. c. 9. for the port of Bristol; 21. H. 8. c. 18. for the port of Newcastle; 11. H. 7. c. 5. & 14. 15. H. 8. c. 13. for the port of Southampton; 27. Eliz. c. 22. for the port of Chichester; 27. Eliz. c. 20. for the port of Plymouth; 31. H. 8. c. 4. for the port of Exeter.—34. 35. H. 8. c. 9. is generally against unloading any rubbish into any haven or river. See against exactions in ports or navigable rivers, Rot. Parl. 50. E. 3. n. 163.—19. H. 7. c. 18. & 23. H. 8. c. 12. are against exactions upon Severn.

. A. By the ports damnified. Any min stay of Stantement of stommon numbers, either at hind or by water, because every man is contribued.

C A P. VIII

Concerning the jus regium, or the king's right of prerogative in ports of the sea.

I HAVE done with the jus privatum and publicum of ports.—I come to the king's right.

Touching the king's right of erection of ports, I have already declared at large, as also concerning his right of ownership, either of franchise or propriety; for that right I call jus privatum, though it be lodged in the crown, because that dominion is transferrable to a subject.

But the right that I am now speaking of is such a right that belongs to the king jure prarogativa, and is a distinct right from that of propriety; for, as before I have said, tho' the dominion either of franchise or propriety be lodged either by prescription or charter in a subject, yet it is charged or affected with that jus publicum that belongs to all men; and so it is charged or affected with that jus regium, or right of prerogative of the king, so far as the same is by law invested in the king.

Now touching this jus regium, and what kind of prerogative the king hath in the ports of the sea, and how far they extend, may be considered under these three relations;

I. How far forth the king's prerogative, or jus regium, extends, in order to the preservation of the safety and peace of the kingdom.

II. How far forth they extend in relation to the trade and commerce of the kingdom.

III. How far forth they extend in relation to the improvement and due answering of the king's customs and subsidies arising by merchandize imported or exported.

And this will let me into what I principally intended in this whole collection, viz. the narrative or history of the customs, which will be the subject of the Third Part of this Discourse.

of the king, in order to the preservation of the jus regium, or prerogative of the king, in order to the preservation of the peace and safety of the kingdom, viz. inasmuch as the ports of the kingdom are the janua and ostia regni, how far the king may by law open or shut these gates, in order to the peace and safety of the kingdom, or upon any surmise of any danger or inconveniency relating thereto. And as to this matter, I set down these things:

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First, What de facto was actually done in this kind :

Secondly, What might be done, as the hws and statutes of the kingdom stand.

And as to the former, the exercise of this power was of two kinds:

(1.) The inhibiting of persons to come into the realm.

(2.) The inhibiting of persons to go out of the realm.

As to the former of these, these things were usually done:

- 1. In time of hostility, there were frequent inhibitions by proclamation, that none of the nation in hostility should come into the kingdom fine licential regis speciali; and this was but reasonable and necessary.
- 2. Even in times of peace, yet there were many times inhibitions restraining great persons of a foreign kingdom to come into the realm, Vide Claus. 20 H. 3. m. 13. dorso, mandates to the constable of Dover, the bishop of Canterbury, and the sheriffs of divers counties, viz. Nolumus quòd aliquis magnus, qui sit de potestate regis Franciæ, applicat in terra nostra sine licentia nostra vel mandato nostro speciali; et tibi pracipimus, quòd non permittas de catero aliquem magnatem, qui sit de ipsius regis potestate, applicare; et si contigerit, ei scire facias quòd statim revertatur. And upon this account, when the emperor came hither to visit the king of England, the historian tells us, that the earl of Gloucester ran into the water with his drawn sword, and withstood his landing, till he had gotten the king's licence to arrive; because he was an absolute prince, and his access might raise disturbances here.

3. A kind of restrained inhibition, ne intret in regnum Anglia, secum deserens bullas, aut instrumenta, vel alia prajudicialia paci regni, vel juri regis. And this was frequently done in cases of the pope's agents, that sometimes came with breves, interdictions, and other matters prejudicial to the king's interest and kingdom's peace. Vide Claus. 15. H. 3. m. 18. dorso, pro de Eynsbam, et sapiùs alibi.

But none of these inhibitions extended to merchants, unless in time of war. Vide the statute of Magna Carta, cap. 30. But in time of hostility, then merchants also of the hostile country were not only forbidden to come in, but sometimes commanded to depart out of the kingdom. Vide Claus. 15. H. 3. m. 19. dorso, a proclamation, quod omnes mercatores de regno Francia exeant terram Anglia by a certain day.

Thus much shall serve touching the first kind of restriction. Now touching that other, viz. the restraint of persons from going beyond the seas. And such restrictions were often heretofore used, in order to the peace and safety of the kingdom; and they are of two kinds:

there

and danger; and when that was the true end and use of it, it carried its own reason with it, and so all men rested satisfied with it. But if at any time it were made an engine to gain money for licences, then it became distasteful, and brought inconveniencies.

The end of these inhibitions were, either the better to apprehend and discover spies, or to prevent the discovery of the councils of the kingdom to foreign states in hostility; or to prevent the supply of foreign states in hostility, either with money, ammunition, or discontented soldiers that possibly would go over to be entertained. These inhibitions ne quis exeat regnum were sometimes extended to all persons, and to all ports, not to pass over seas without the king's licence; as Cl. 10. H. 3. m. 27-dorso. Claus. 11. H. 3. m. 25. dorso. Claus. 3. E. 3. m. 9. dorso. Sometimes by such proclamations all ports were not closed, but some one or some sew eminent ports, where possibly a great vigilance might be used, as Dover. Claus. 3. E. 3. m. 26. dorso, et sapius alibi.

2. A special restriction. Such is that by the writ de securitate inveniendal ne eneat regnum, which concerns particular persons; and though at this day, this writ is granted upon oath made before the chancellor in reference to civil causes, yet certainly the original institution of this writ was in order to the safety of the kingdom, as appears by the suggestion of the writ; quia datum est nobis intelligi, quod tu versus partes externs absque licentia nostra clam destinas te divertere, et quamplurima nobis et corona nostra prajudicialia ibidem prosequi intendis, &c. which though it be not traversable, yet it is a good direction, what the end of that writ was, and how it ought to be used.

Thus far concerning the fact, what hath been used to be done in reference to persons. —It seems the law stands thus:

1. At common law any man might pass the seas without licence, unless he were prohibited: therefore much more might merchants.

2. But at common law, the king might by his writ prohibit a person particularly from going beyond sea without licence, by his writ of ne exect regnum; and this may be done at this day. Vide Fitz. N. B. fol. 85. Dy. 165. 269.

3. At common law, in time of public danger, and pro bac vice, there might be a general inhibition by proclamation, restraining any from going beyond sea without licence.

4. But that was not to be made an engine to gain money, or restrain trade; but licences of right ought to be granted to persons upon whom

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there was no just suspicion. Otherwise it was an injury to the people. And hitherto those several petitions and concessions in parliament tend, viz. que le mere soit overt. Vide Rot. Parl. 18. E. 3. n. 10. — 22. E. 3. n. 8.—25. E. 3. n. 22. And by the opinion of Fitzherbert, N. B. 85. this power still remains, viz. in case of public danger, & pro bâc vice.

5. But as to merchants, as well natives as foreigners in amity, it seem this power at last of public inhibition was restrained by the statute of Magna Carta, cap. 30. Omnes mercatores, nisi publice antea probibiti fuerint, babeant salvum et securum conductum exire de Anglia et venire in Angliam, tam per terram quam per aquam, ad emendum vel vendendum, sine aliquibus malis tolnetis, &c. wherein Sir Edward Coke takes observation, that public prohibitions, in reference to merchants, is not intended of prohibition by proclamation, but by act of parliament. And this statute of Magna Carta is much enforced by the statutes of 2. E. 3. c. 9. 14. E. 3. c. 2. that all merchants-privies or strangers may go and come with their merchandises into England after the tenor of the great charter, and divers other statutes to the same purpose.

By the statute of 5. R. 2. cap. 2. all men were inhibited to go beyond sea without licence under pain of forseiture of all their goods, except the lords and great men of the realm, and true and notable merchants, and the king's soldiers.

And this statute continued long in force; and yet we find it doubted in Dy. ubi supra, whether without an express inhibition it were a contempt to pass the seas without licence.

But by the statute of 4. Ja. cap. 1. this clause of the statute of 5. R. 2. is repealed; so that at this day the law stands in all points as it did before the statute of 5. R. 2.

There belongs to this part of the jus regium another fort of inhibition, viz. the inhibition of the exportation of those things, in which the strength and safety of the kingdom was concerned; as the inhibition of the exporting of horses, arms, bows, arrows, and the like offensive and defensive weapons, and provisions of war. But these will more properly come under the second generall, viz. the king's prerogative in ports of the sea in relation to commerce and trade; which will be the subject of the next chapter.

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Concerning the jus regium in ports of the fea in relation to commerce

I COME to the second branch of the king's right in ports, viz. in relation to commerce, and I shall hold the same method therein as in the former.

That, wherein the exercise of this right is observable, is the power of opening or shutting of the ports in reference to goods exported or imported; and therein I shall consider.

What de fatto hath been done in this kind.

What de jure may be done therein.

As touching both the former and latter, for the more methodical

proceeding therein there may be these two considerations :

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- (1.) The prerogative or power of the king in opening of the ports, where the law hath, as I may say, shut them; viz. when there is a prohibition by act of parliament of the importation or exportation of goods under pain of forfeiture. Vide 11. Rep. 88. Cas. Monopolies. In that case, the king hath regularly power by a non obstante, though not in toto to abrogate it, yet in particular cases of particular quantities or particular persons, and for a determinate time, to dispense with this law, and to open the ports, notwithstanding this prohibition, but not to grant a general dispensation. Vide tamen stat. 26. H. 8. cap. 10. power given to the king to dispense with statutes of this nature. But because this consideration rather respects the prerogative of the king in dispensing with penal laws, and doth not so directly concern the business of the ports, I pass this over.
- (2.) The prerogative of the king in closing or shutting of the ports, and that under a double respect:
 - i. The closing of the ports against the importation of goods or merchandize.
 - 2. The closing or shutting of the ports against the exportation of goods.

And I shall examine both these in their order.

1. And first, concerning importation of foreign goods, and the prohibition of the importation of them. We may find de fatto that such inhibitions have been of two sorts, viz. general inhibitions that such or such merchandizes

merchandizes shall not at all be imported, under pain of confication or forfeiture; or else they have been inhibitions or restraints fub modo; as, namely,

they shall be imported only at such ports or in such ships.

First, For general prohibitions of merchandizes of any particular kind. These were sometimes made, but very rarely; neither indeed could they be lawful without the help of an act of parliament, because there have been in all times several statutes made for the liberty and encouragement of merchants strangers especially to come into the kingdom and trade, which could not be derogated by a proclamation. Magna Carta, cap. 30, 2. E. 3. c. 4. 9. E. 3. c. 1. 14. E. 3. c. 2. 25. E. 3. c. 2. and divers other statutes.

And therefore, if at any time there were fuch inhibitions by proclamation, they were commonly temporary upon an exigence of state, and not perpetual, nor of any certain continuance. But when there were perpetual or long restraints of this nature, they were always done by parliament. 3. E. 4. c. 4. 1 R. 3. c. 12. 19. H. 7. c. 21, against importation of foreign manufactures therein specified; 4. E. 4. c. 1. against importing of foreign cloaths; 5. Eliz, c.7, against importation of daggers, &c.; 27. H. 6, c. 1. an inhibition of the wares of Brabant and Holland, because they there had made restraint of importation of English cloth; 23. H. 8. c. 7. an inhibition by act of parliament of the importation of French wines between Michaelmas and Candlemas; and very many more of the like kind. And the reasons of these interposings of acts of parliament was, because that proclamations proved very ineffectual to that purpose, partly because it was at best doubtful whether they could at all be effectual against so many acts of parliament; but doubtless they could not without an act of parliament induce a forfeiture of the goods so imported, as bath been often resolved; whereof more hereafter. See the resolution of the case of monopolies, 11. Rep. 88. the grant of the fole importation of foreign cards, though prohibited by act of parliament, ruled to be against law, and a monopoly. Much more were the things not prohibited by law to be imported. Vide Peeth's case, Rot. Parl. 50. E. 3.

The only act of parliament, that feems to give a countenance to these kinds of inhibitions, is that of 3. Ja. c. 6. The king granted a charter to the merchants, that no Spanish wines should be imported but by them. This act repealed that charter in a great measure, whereby some would infer that the patent was good, since nothing but an act of parliament seemed necessary to repeal it. But the consequence is mistaken. In ma-

jorem cautelam, an act of parliament was used in this case as the most safe and effectual means: but if any man consider those acts of parliament, that enact the sea to be open, or the resolutions of court in cases of this nature, or the very preamble of the act itself, he will easily find that such inhibitions cannot be without an act of parliament.

Secondly, as touching particular reftraints; as, for instance, that malmseys shall not be imported, but unto the port of Southampton; such a grant is against law, and was accordingly resolved in the case of Southampton, T. 1. Eliz. Rot. 73. cited in Cooke's comment upon Magna Carta, c. 30. and therefore there was a special act of parliament made the 5. Eliz. for the making good of that charter; and the like course hath been used to make good those restrictions of foreign trade to particular companies; as, for instance, the Muscovy company, and some others.

And thus much briefly touching the point of the prerogative in reference to imported goods, and how it stands limited by law.

2. Concerning exportation, and how far forth the ports may be that in reference to goods and merchandizes exported, both the quid fatti and the quid juris therein. These prohibitions of exportation were never generally of all goods; for that were to destroy trade, but of some particular goods and merchandizes. And those restraints were of two kinds, viz. general restraints, that they should not be at all exported; or special and qualified restraints, that they should not be exported, but in such ships, or at such places. Touching both these briefly: and first, touching the general inhibitions.

It is certain, that inhibitions of this nature were very frequent by proclamation; and when they carried with them the apparent reasonableness and fitness of the inhibition, they were not much disputed. Those inhibitions were for the most part touching such commodities whereby the kingdom might be weakened, or scarcity occasioned, by the exportation : as arms, ammunition, corn, victuals, gold, filver, horfes, timber, thread of yarn or woollen, and sometimes of falcons. Vide Clauf. 10. E. 2. m. 13. dorfo. Clauf. 38. E. 3. m. 29. Clauf. 41. E. 3. m. 24. dorfo. Clauf. 42. E. 2. m. 2. dorfo. Cl. 45. E. 2. m. 4. dorfo. And fometimes in the proclamation there was annexed a clause of imprisonment of offenders; sometimes the forfeiture of the things imported; formetimes the forfeiture of all their goods and lands. But these clauses of forfeiture were only in terrorem; for, as we have before observed, a proclamation barely cannot induce a forfeiture of goods. But yet sometimes the searchers and other officers did seize the goods; and when they had so done, they were compelled to accompt for the goods so feized feized in the exchequer; and the parties, whose goods were so seized, were put to much trouble, before they could have their goods again. But the most usual way to punish offenders against such proclamations was by fine and imprisonment; for where the king may by law prohibit, the proclamation doth increase the offence. And these proceedings were by information at the king's suit, sometimes in the king's bench, as H. 1. E. 2. B. R. rot. 38. against such as exported horses, arms, money, and plate, against the king's proclamation; sometimes in the exchequer, Communia Trin. 16. E. 3. rot. mich. 19. E. 3. rot. claus. 64. m. 29. and sometimes coram concilio, viz. in chancery.

How far these proclamations might be warrantable by law in these particular cases, I shall not positively determine; only thus far I shall say,

First, that if it were admitted, that in these particular cases of arms, ammunition, victuals, and money, such proclamations might be made, and thereby the offenders might be subject to fine and imprisonment; yet it could not be extended to other things, neither ought or might this inhibition be an engine to gain money for licenses. For if the proclamation had any strength, it was because of the inconveniences of the exportation of these things. If it were not a public inconveniency, it could not be inhibited barely by proclamation; and if it were a public inconveniency, it might not be licensed for private profit. If it might, the strength of the proclamation would consequently cease.

Secondly, if these proclamations were admitted lawful; yet they could not induce any forfeiture of lands or goods, or of the very goods so exported against that inhibition; because that lyes not within the strength of any thing but a law.

Thirdly, though possibly in the time of hostility, or public danger, or common scarcity, such prohibitions by proclamation of exportation of victuals and arms, might have a temporary effect and use; yet we may easily guess that they were not effectual for perpetuity, nor indeed sufficient provisions pro tempore; for the king and his council thought not sit to rest upon such ineffectual means, but acts of parliament have successively passed for the inhibition of exportation of these very things, with penalties of forfeitures added to them. See 1. E. 4. c. 5. for horses; 1. E. 2. P. M. c. 5. of corn, herring, butter, cheese, and wood; 25. H. 8. cap. 2. of victuals of all sorts; 9. E. 3. cap. 1. 19. H. 7. cap. 15. of bullion or money. The like might be instanced in divers other things.

Let us now come to particulars, or qualified restraints, and they are of two kinds:

First, The restraints of exportation in any but English bottoms. This hath been attempted to be done by proclamation, as a good expedient for the increase of shipping and mariners, and the encouragement of trade and navigation. Vide inde Claus. 41. E. 3. m. 25. of a proclamation to that purpose; but it proved ineffectual, till provision was made for it by acts of parliament, viz. 5. R. 2. c. 3.—6. R. 2. c. 8.—14. R. 2. c. 6.—4. H. 7. c. 10. But because it provoked foreign princes to do the like, it was repealed by the statute 1. Eliz. c. 13. with certain provisions made in the case by that statute and the statutes of 5. Eliz. c. 5. and 13. Eliz. c. 15. But now, by a late act of parliament, 12. Car. 2. intitled, "An act for encouraging of navigation," the use of foreign ships is in a great measure restrained.

Secondly, The restraint of exportation in any but from certain special ports, viz. the staples; whereof, and of their progress and cessation, in the next chapter, because it relates in a special manner to the business of the customs.

And thus I have passed through the consideration of the king's prerogative in ports, for their opening and shutting in relation to trade and commetce. And upon the whole matter, it will appear from the several acts of parliament that have been made for the support and increase of trade, and for the keeping of the sea open to foreign and English merchants and merchandize, that there is now no other means for the restraint of exportation or importation of goods and merchandizes in times of peace, but only when and where an act of parliament puts any restraint. Several acts of parliament having provided, que la mere soit overt, it may not be regularly shut against the merchandize of English, or foreigners in amity with this crown, unless an act of parliament shut it, as it hath been done in some particular cases, and may be done in others.

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Concerning the jus regium in the ports, with relation to the customs.

E come now to the third relation of this jus regium in the ports of the fea, viz. the relation to the customs, and the exercise of the prerogative in the ports, under that relation. And this will be examined in these considerations.

I. How far forth the king did de fallo, and might de jure, limit the ports of exportation of customable goods, wherein his customs might be answered.

II. How far he did and might settle in all ports such means or conducibles, as might be for the due answering of his customs. And herein,

(1.) Of the officers of the custom-house, and their fees.

(2.) Of the means to discover the certain weight of merchandize; and therein of tronage.

(3.) The means to discover whether the customs were answered; and therein touching the cockets and certificates.

I. As to the first of these, viz. the limiting of ports wherein customable goods should be laden and unladen, I will consider these two things, viz.

(1.) How it stood as to this matter anciently.

(2.) How it stands at this day.

(1.) As to the former of these considerations, it is plain, that from the beginning of Edward the first, until the time of Edward the third, there were few or no customs, but the great custom of wools, woolfells, and leather, and the petty customs answered by merchants-strangers, expressed in the contract or Carta Mercatoria of 31. E. 1. But the great and considerable revenue was that of the great customs.

For the better and more regular answering of these customs it was thought fit, that there should be certain towns and ports assigned for the venting of these merchandizes of wools, woolfells, and leather, where the king might have his custom-house officers settled, for the receipt of the customs. And the king had a great advantage in his hands to bring this to pass; because the exporter, if he had not a cocket testifying the paying of his customs, the wools and leather so exported were subject to be forfeited, and seized as forfeit: so that there was no safe transporting of these commodities, but in such ports where this cocket, and the king's seal, with which it was to be sealed, was lodged.

But on the other fide, as it concerned the king to fecure his customs, so it concerned him, that the trade might not be obstructed; for that must of necessity impair his revenue of the customs; and therefore there was no great fear, that the trade would be confined to fewer ports, than stood with the absolute necessity of the securing of the customs.

The limiting of the ports wherein the king's customs were to be answered, were of two kinds, viz.

1. The special limitation of ports in relation to particular merchandizes.

2. The general limitation of ports of importation and exportation, in reference to all customable goods.

1. Touching

1. Touching the former of these, it is regularly true, that the king might not, without an act of parliament, restrain the importation or exportation of goods to particular ports; and the reason is, because regularly all publick ports are free and juris publici. And therefore, when there was a grant to the bailiss and burgesses of Southampton, by queen Mary, that no malmseys should be imported at any port but Southampton, under pain of payment of treble custom; it was resolved, first, that this restraint was against law; secondly, that the affessment of treble custom was also against law. Cooke on Magna Carta, tap. 30. pag. 61. Yet it is certain, that de fasso in order to the better answering of the king's customs, there were certain ports of exportation limited for the merchandizes of the staple, which were called staples or ports of the staple, which were used before they were settled by the parliament, but with great unquietness until they were settled by the parliament, viz. 27. E. 3.

The merchandizes of the staples were wool, woolfells, leather, lead, and tin, as appears by the statutes of 27. E. 3. c. 1.—21. R. 2. c. 17. and divers others. The first institution of the staples, viz. settled places for the market and ports for the exportation of these staples commodities, began thus:

Rot. Parl. 6. E. 2. p. 2. m. 5. the king iffued a commission to divers merchants, to appoint certain staple ports, and ordinances for those staples, with certain penalties imposed upon such as did not submit to it.

Clauf. 3. E. 2. m. 1. dorso, strict commissions issued to inquire touching offenders against the constitutions of the staple, which were made, as appears, in pursuance of the former commission.

Clauf. 2. E. 3. m. 24. there issued a proclamation bearing test 1 May, 1. E. 3. wherein the ordinances of the staple made in the time of king Edward 2. are reinforced; the several ports in England, Ireland, and Wales, for the exportation of staple commodities are appointed; and several provisions against offenders.

After, this being contrary to the statute of Magna Carta, especially as to merchants-strangers, it is enacted by the statute of 2. E. 3. c. 9. that all: staples on this side, and beyond the sea do cease. After this, there was a great liberty of this trade continued for a pretty while; insomuch that when the merchants, by a kind of combination, had settled a kind of staple at Bruges, it was decryed by the king's proclamation. Pat. 6. E. 3. m. 2.

But notwithstanding this statute, and although divers other statutes, and especially 9. E. 3. c. 2. and the 25. E. 3. c. 2. enacted a free market, especially to merchants and strangers; yet, the usefulness and conveniency of staples appearing, they were again resettled by proclamation, as well on this

fide, as beyond the sea; as appears Rot. Parl. 17. E. 3. n. 58.—21. E. 3. n. 10.—22. E. 3. n. 13. But a proclamation was too feeble a bottom for a business of this importance to commerce and the king's customs; and therefore an act of parliament was made for the settling of the staples, both for the market and exportation of staple commodities, viz. 27. E. 3. c. 1. et sequentibus; and then it was fixed, and so continued for a long time under those various alterations that were introduced therein by several subsequent laws, till at length these staples became disused and antiquated.

Besides these staples, I find sometimes special restrictions of the passage of customable merchandizes at particular ports, especially as to woolfells and leather, out of which the great customs arose; and this the king had a great opportunity to do, by fixing the seal called the cocket, without which these goods were not suffered to pass unto some particular ports. See accordingly Claus. 5. E. 3. p. 1. m. 12. dorso. The king, having placed his cocket in particular ports therein mentioned, issued a proclamation, that no wools should be transported but at those ports ubi sigillum nostrum quod dicitur cockquet et tronum nostrum deputantur, viz. Newcastle, Kingston-upon-Hull, St. Botolph's, Lyme, Yarmouth, Ipswich, London, Southampton, Chichester, Melcomb, Exeter, Hartlepoole, Sandwich; which was in effect nothing else but a staple, but not so called because of the late statute of the 2. E. 3. that took them away.

But this was against the great charter, of which the statute of 18. E. 3. c. 3. que le mere soit overt is but declarative; and therefore the erection of those exclusive ports by the statutes of 27. E. 3. c. 1. of the staple was requisite. Otherwise it might not have been legally done; for as well as some ports might be inhibited, more might be inhibited, which might much impair the trade of the kingdom. See the petition in parliament, 6. H. 4. n. 54. against the restraint of the shipping of wools at Ipswich, to their great disease and destruction, and the danger of the loss of their wools, and the diminution of the king's customs.

Thus much shall serve touching the particular limitation of ports, in reference to particular merchandizes.

2. The general limitation of the ports for the importation and exportation, was made first by the statute of 4. H. 4. cap. 20. to great ports, and after by the act of parliament of 1. Eliz. c. 11. And indeed without an act of parliament such a limitation could not be, for it is against the liberty and jus publicum of ports.

MVSEVM BRITANNICVM

By

By the latter statute it was enacted, that no ship be laden or unladen, but in some open place assigned by the queen's commission in the ports of London, Southampton, Briftol, Chefter, and Newcaftle, and in some open key or wharf in all other ports havens creeks or roads, Hull only excepted, where a customer comptroller and searcher had been for ten years last refident, or should be refident. To bib againers and awars salt or horsewing and

And thus much shall serve touching the jus regium in ports, viz. to open thut or limit them in relation to the customs." I look and borgiow and the customs

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Touching the officers of the customs attending the customs; the tronage, or king's beam; and the cocket, or certificate of customs paid.

BEFORE I can leave the business of the king's ports, and the relations they have to the customs, I must give some observations touching these three matters, viz. he other, violette, the little the bire of we said s which the matters, viz. he other was the little with the matters, viz. he other was the little was the matters, viz. he other was the little was the matters, viz. he other was the little w

I. The officers of the king's customs.

. H. The tronum, or tronage. if our he seminant sate should be followed as

HI. The cocket and certificate testifying the payment of the customs.

I. In every great port in England or Wales, there have been anciently, and still are, three great officers, viz. the collector, comptroller, and fearcher; besides other petty subordinate officers, viz. land-waiters and tides-men. But in the port of London, besides these officers, there is a newerected officer, viz. the surveyor of the customs, poster said to abased sets to

II. Touching tronage, pelage, &c. the king being anciently answered fome customs that were with relation to weight, viz. the facks of wool that answered by weight, and some customs of merchants-strangers which were answered by weight, there were two kinds of officers, which yet were commonly united in one person in every port, viz. trongium, which was the scale and weights for wool; and pefagium, which was in reference to averdupoile, the course of the course of the real shet experts and other grades course slice

Touching the tronagium lanarum, it was oftentimes in farin, fometimes granted to the ports wherein it was exercised, sometimes exercised by a particular officer appointed thereunto; but when it was not under grant or farm, commonly the government of it was under the collector of the great customs in every port; and, together with the account of his collection of the great to see and and and

customs, he gave an account also of the profits of the tronage; as appears in the accompts of the customs, in the times of king Edward the first, Edward the second, Edward the third, in the pipe, which I have perused.

It appears by those accompts, that this office, as well as that of the customer, comptroller, and searcher, was in the king's disposal. That which was answered to the crown for tronage, did differ inseveral parts; but ordinarily it did not exceed 2d. ob. for every sack of wool, or for every merchant that weighed his wool; and in some ports it was answered by the sack; as in Chester, de quolibet sacco lane unum quadrantem.

The entry of the collector's account in relation to tronage did commonly run thus:

Et respondet de 51. provenientibus de tronagio prædictarum lanarum, viz. de quolibet sacco integro 2d. ob. Thus it was answered in the ports of London, Lyme, Boston, &c. but in Chester, de quolibet sacco unum quadrantem.

And thus much briefly of tronage.

the officers above stairs, viz. the customer and comptroller, that the king's duties were paid; without which the searcher, whose office it was to clear the ship, would not give liberty to a ship to pass: for the want of these was in effect a forfeiture, sometimes of the ship inself, but commonly of the customable goods that were laid on board without this certificate. This, though it might properly seem to belong to the Third Part of this tract, which concerns the customs themselves; yet, because it imposeth a kind of restraint upon the liberty of the port with relation to the customs, it may come in proper enough here, and be preparatory to the consideration of the business of the customs.

First, touching the cocquet. This was nothing elfe but a testimonial, that the customs outwards due to the king are paid.

The cocquet began with the great customs of wools, woolfells, and leather; for there were no other goods that paid customs outwards anciently but these; neither was there any other goods cocquetted but these; insomuch that these great customs in many records are called the cocquet, or custom of the cocquet: for then there were no other goods necessary to be cocquetted. And therefore it was a great mistake in the beginning of the late king's time, when there was no subsidy of tonnage and poundage settled, to think, that the not cocquetting of any goods, other than wools, woolfells, and leather, should be a forseiture of them, or a ground in law to stay them from passage outward; for most clearly the cocquet was only necessary where there were customs due by law.

But when other goods were charged by act of parliament with subfidies outwards, then indeed the cocquet was requisite as well for other goods as for wools, woolfells, and leather.

Touching the cocquet as it stood anciently, when the customs of wools, woolfells, and leather, were in use, we will consider,

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 - (2.) The feal.
 - (3.) The fee man a good sale of also a word was the state the
- (1st.) The form of it anciently ran in Latin in the king's name, viz.

Edwardus omnibus, ad quos, salutem. Sciatis, qued J. S. nobis solvit in portu nestro London. custumas nobis debitas pro tribus saccis lanæ, que quietus est, testibus collectore & contrarolatore custumarum nostrarum in portu prædicto die anno, &c. And these words in the conclusion, que quietus, &c. gave it the name of the cocquet.

This was subscribed by the collector and comptroller of the port, sealed with the cocquet seal, and delivered to the master of the ship or the merchant, and was the warrant to the searcher to clear off the ship.

And the form of the cocquet at this day for that leather that is transportable by law, continues still in the king's name, though in English. But for other merchandises outward it is alrered, as shall be shewn in its place.

- (2.) The seal.—The king usually in these ancient times sent out of the exchequer a particular seal of his own for the sealing of these cocquets, which was called sigillum de cockette, and commonly in those elder times rested in the hands of the competeller of the customs.
- (3.) Upon the cocquet of wools, woolfells, and leather, there was anciently answered to the crown a certain duty, for which the collector for the customs answered upon his account under the title of exitus de cocketto. Vide stat. 4. H. 4. c. 21.; 14 H. 6. c. 15.; and sometimes exitus sigilli, quod vocatur cocquett; which was most commonly 2d. of every merchant transporting wools, woolfells, or leather, as appears in the customer's accounts in the pipe, sub annis Ed. 1. 2. et 3. and commonly immediately succeeded his account of the customs, viz.

Et respondet de 31, de entitus de cocketto distarum lanarum, viz. 2d. de quolibet mercatore lanas pelles lamitus vel toria babente, excuntia de portu pradicto in aliqua nave. But in some ports it was 2d. ob.

But divers statutes having inhibited the exportation of wools, woolfells, and leather, it seems this duty hath been antiquated ever fince the time of E. 3. Only, as before, for such leather as is transportable by licence or act

to the Cultom-bould, at Nov. 1694."

of parliament, the old cocquet continues. And thus much for the old cocquet.

At this day, and for many years, all or most part of goods outward as well as inward are charged with subsidy of tonnage or poundage; and therefore all goods exported must have a cocquet to testify the payment or security for the duties chargeable upon them, or otherwise they are seizable.

But these cocquets are not now made in the king's name, nor under the king's seal, but are sealed with the officer's seal, and subscribed by the collector and comptroller, and one of the commissioners for the customs, or their deputy if in commission; or by the collector and comptroller, or some of the farmers, or their deputy if in farm.

The cocquets at this day are of three kinds, viz. ordinary cocquets, parcel-cocquets, or coast-cocquets.

The common or ordinary cocquets run thus:

London. "Know ye, that J. S. 15 April 1664, hath laden aboard "the Mayflower, T. S. master, twenty Spanish cloths for Flushing, for all "which the king's duties are fully paid. Witness our hands and the seal

of our office, this 16 April 1664." It was the same and and and a same and and a same and and a same a same a same a same and a same a same

Subscribed by the officers of the custom-house, and one of the farmers or commissioners.

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A parcel-cocquet is granted, where goods entered outward are not all shipped upon the same ship, but the searcher inderseth what part of them were; and then the cocquet is brought back and kept by the officers that granted it, and a new cocquet made for so much only as was shipped upon the first ship, and a third cocquet is granted for the remaining part, as such merchant shall please; and the first cocquet is marked (1), the second (2), the third (3).

A coast-cocquet is granted, where native commodities are sent from one port to another within the realm; because in such case no custom or subsidy is due. Yet because when they are laden aboard, they may be transported to foreign parts, there is bond given for the unlading at the other port of discharge within the kingdom, and then a cocquet granted; and upon return of certificate that the goods are unladen in that other port, the bond is delivered up. Though ordinarily, if they are small parcels, or such as commonly not intendible to be sent beyond sea, they pass by a warrant, which is called a transfire; viz.

"Suffer J. S. to pass a hundred pound weight of grocery-wares to "Colchester in the Bonadventure of London, J. G. master. Dated at "the Custom-house, 21 Nov. 1694."

Subscribed by the collector, comptroller, and one of the commissioners. Sealed.

Thus much concerning the cocquet, which is properly in reference to goods customable outwards.

A word concerning certificates, which properly concern foreign goods, or goods imported that pay customs inwards. These certificates are of two kinds:

1. Certificates for the advantage of the merchant. By the rules formerly set and at this day in force, merchants, having paid their customs inwards, if they export the same into foreign ports, have an allowance of part of their customs and subsidy. Vide the 2d and 4th rule of the book of rates. And in such cases they ought to have certificates of their payments inwards, to the end they may have their repayment according to the proportion of their customs.

2. Certificates for the advantage of the king, that he may not be deceived. If foreign goods customable are imported into one port and pay there their customs, if they are afterwards transported to another port within the kingdom, they ought not to be chargeable a second time with their customs upon importation into the second port; and to the end the king may not be deceived in both places, by the statute of 3. H. 7. c. 7. if goods be discharged or put to sale in any other port than where they are first entered, without a certificate of the nature of the goods and that the customs are paid, the goods are forseit.

Upon this statute it hath been used in the out-ports, that if foreign goods are imported and after sent away by water in ships or lighters to any port within the realm, in whole cask or in the same package by which they were imported, the officers of the custom-house refuse to let them pass, but by certificate testifying the payment of the customs; and therefore have required satisfaction, by oath or otherwise, that the customs were paid: but if in broken or small parcels, they have used to pass them by transire, without such attestation or certificate. But in the port of London they repass all goods once landed unto any port in England by transire, or let-pass, without any taking notice whether the customs are paid or not; which seems to be just and warrantable as to foreign goods; because, if once landed and custom paid, no new custom is due, whether exported beyond sea or to any port here.

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AN APPENDIX.

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Concerning the five ports; their names, privileges, and charges.

BECAUSE the cinque ports are or at least have been the noted and famous ports of this kingdom, endued with great immunities, it shall not be amiss to add something by way of appendix to the former discourse concerning them, which at least in point of history may be of some use. And herein I shall consider,

I. The places or ports themselves, and their members.

II. Their burthens, and charges or services.

III. Their privileges and liberties.

- I. Touching the first general head, the cinque ports and their members are set forth in several records and monuments. That, which I shall follow principally, is that old book of Sandwich before mentioned, wherein, besides the particular matters relating to that port, are contained most of the principal matters relating in general to the cinque ports. The first, viz. Hastings, lyes in Sussex, the rest in Kent. They are these:
 - 1. Hastings, ad quem pertinent 10 membra, viz. unus vicus qui dicitur littus maris in festedia*, Pevennesel, Burwarebeth, Hydency, Winebelsea, Rya, Yabanne, Bekestorne, et Grenbeth +; but according to a later account, Pevensey, Seaford, Bulver-Hythe, Petit-Ibam, Hindin, Bekisborn, Grenge.
 - 2. Ramenhale, ad quem pertinent Prouchelle, Lyde, Ofwarfton, Dengemereis, Vetus Romenale; according to a later account, Brombil, Ledd, Old Rumney, Dengimarsh, Overelston.
 - 3. Hetha, ad quem pertinet Westbethe.
 - 4. Dover, ad quem pertinent Folkeston, Feversbam, Margate non de solo sed de cattallis et de novo concesso, Kingsdown non de solo sed de cattallis; ac-

[†] One of the ten members professed to be enumerated is omitted. This may be supplied by adding Northie, which is one of the ten mentioned by Mr. Lambarde. See Lamb. Peramb. of Kent, ed. 1596. p. 121.—EDITOR

cording to a later account are added, St. John's, Gorend, Burchington, Woodchurch, St. Peter's, and Ringward.

5. Sandwich, ad quem pertinent Fordewicus Recolvea, quod quondam fuit Serre, Stonoredale non de solo sed de cattallis et de novo concesso, Walmere, Ramsgate; isti sunt non de solo sed de cattallis; and according to the later account, Foreditch, Deale, Walme, Ramsgate, Stoner, Serre, Brightlington.

II. As to their services, they were of two kinds, viz. their honorary services, and their services in defence of the realm. A word touching either.

(1.) Their honorary fervices were of two kinds; 1. At the coronation of the king or queen, or both; 2. At the parliament.

1. At the coronation the folemnity of their fervice was thus. First, the fummons and fervice for the coronation was and ought to be forty days before it be performed; and one of these writs ought to be directed to the warden of the cinque ports. Secondly, the writ being received. the barons of the cinque ports meet at Brodhul; and there, if the king and queen be both crowned together, they chuse 32 barons, if one alone then 16 barons, to perform the service for the five ports, who were to habit or clothe themselves at their own charge, but their stay at court was to be at the common charge of the five ports. Thirdly, at the day of coronation there was to be a purple canopy carried over the king, and another over the queen if the were to be crowned also, each canopy to be born up with four filver staves, and upon the top of every staff a filver bell, and each staff was to be carried by four of the barons? of the five ports, viz. 16 to every canopy. Fourthly, after the coronation made, when the king dines in the great hall, the barons of the five ports are to have a table to themselves on the right hand of the king for themselves and the rest of the barons of the five ports that will be present. Fifthly, all being performed, the canopy staves and bells are the fees belonging to the barons of the five ports; and if there be two fuch canopies, the barons of the port of Hastings are to have one, which they give to the church of Chichester; and the rest of the barons the other. which they give to the church of St. Thomas of Canterbury; and divide the bells and staves among themselves.

2. Their fecond fort of honorary fervice is in parliament. Upon fummons directed to the warden of the five ports, each of the ports fend two barons to the parliament, which fit there by the name of barones quinque portuum.

(2.) I come to their naval services in defence of the realm and coast, which the barons of the several ports are bound to provide at the summons of their service by writ under the great seal, which ought to issue forty days before the service and rendezvous appointed.

1. The port of Hastings with its members are to find 21 ships, and

in every thip 21 men.

2. The port of Ramenale with its members are to find 5 ships, in every ship 21 men.

3. The port of Hethe with its members are to find 5 ships, in each

ship 21 men.

- 4. The port of Dover with its members are to find 21 ships, in each ship 21 men.
- 5. The port of Sandwich cum membris are to find 5 ships, and in each ship 21 men.

In the whole 57 ships.

Thus their service is recorded in that old book of Sandwich, and in the red book of the exchequer fol. 196.

Upon the summons, these ships ought to continue in the king's service at the respective charge of the ports by the space of fifteen days, the sirst day being reckoned the day wherein they set sail to the general rendezvous.

But if the king need their service longer, they are to be at the king's charge, which is particularly inserted in the red book, viz. 6d. per diem to the master, 6d. per diem to the captain constabulario, and 3d. per diem to every other.

The distribution of the gross charge of the ports upon their members

was ascertained by custom.

The means of bearing the charge was by contribution of the several inhabitants of the ports secundum facultates; and this was so settled by the charter of 26. Ed. 1. viz. quòd omnes illi de quinque portubus prædittis, et alii quicunque advocantes se de libertate eorundem et ed gaudere volentes, contribuant, viz. quilibet eorum juxta sacultates. This charter was confirmed Rot. Pat. 1. E. 3. p. 1. m. 24. And further it was granted by affent of parliament, quòd omnes illi de quinque portubus, et alii quicunque advocantes se de libertate eorundem et inde gaudere volentes, contribuant ad navigium et servicium prædittum saciendum et manutenendum, de omnibus bonis et cattallis suis tam extra libertatem quinque portuum quàm infra: et ad boc per majores et jurates quinque portuum prædittorum, et etiam per constabularium nostrum Dover, si necesse suinque portuum compellantur; and also, that as well their foreign goods as their goods within the ports should contribute to the tallages set upon these ports; which

was another charge that lay upon these ports, viz. tallage; which was in use before the stat. of 25. E. 1. de tallagie non concedende, viz. the king was used to tallage his own ancient demesnes, and among these the sive ports, or at least all of them but Sandwich, which, as hath been formerly shewn, was not part of the king's ancient demesnes, but came to him by exchange with the archbishop of Canterbury.

And thus much concerning the charges of the cinque ports. Therefore, III. In the next place, concerning their immunities and privileges.— Some they had by prescription or custom; others they had by charter; though for the most part their customary privileges were recited and confirmed, and others granted by charter. I shall therefore in the first place

mention their principal charters, and then make fome observations upon them relating to their liberties and privileges.

Their charters were many and ancient; but the principal and most comprehensive were two charters granted by Ed. 1. both which are exemplished and confirmed 1^{ma}. Par. Pat. 5. E. 3. m. 27.

The former, granted 17 Jan. 6. E. 1. whereby their ancient liberties are confirmed, and farther liberties granted, viz.

Quòd quieti fint de omni theolonio et omni consuetudine, viz. lastagio, stallagio, passagio, cariagio, rivagio, sponsagio, et omni wrecco, et de totà venditione achato et rechato, per totam terram et potestatem nostram, cum socha et sacca thol et them; et quod babeant infangthef; et quod sint wrecfry, witefry, et lastagefry; et quod babeant domum et frand apud Fernemuth, secundum quod continetur in ordinatione per nos inde fasta et perpetud observanda; et quod quieti fint de soiris et bundris, ita quod si quis versus eos placitare voluerit ipsi non respondeant, neque placitent aliter quam placitare solebant tempore Henrici proavi noftri ; et quod babeant inventiones suas in mari et in terra; et quod quieti sint de omnibus rebus suis et de toto mercato suo, ficut liberi bomines; et quod babeant bonores suos in curia nostra, et libertates suas per totam terram nostram quocunque venerint; et qued ipfi de omnibus terris fuis, quas tempore Hen. regis patris nostri, viz. anno regni sui 449. possiderunt, quieti sint in perpetuum de communibus summonitionibus coram justiciariis nostris ad quæcunque placita itinerantibus, in quibuscunque comitatibus terre fue existent, ita quod ipsi non teneantur venire coram justiciariis pradictis, nifi aliquis baronum ipforum aliquem implacitet vel ab aliquo implacitetur; et quod non implacitent alibi, nifi ubi debuerunt et ubi folebant, scilicet apud Sbipweyam : with a confirmation of other ancient liberties, &c. Ita tamen quod fi ipfi barones in justitia facienda siu recipienda defuerint, custos noster et bæredum nostrorum quinque portuum, qui pro tempere fuerit, portus et libertates corundem ingrediatur

ingrediatur ad plenam justitiam saciendam; ita quòd dicti barones et baredes sui sacient nobis et baredibus nostris regibus Anglia, per annum plenarium servicium suum 57 navium ad custum suum per 15 dies ad nostram vel baredum nostrorum suum monitionem. Concessimus etiam eisdem, quòd babeant infangthes in terris suis insrà portus pradictos eodem modo, quo archiepiscopi episcopi abbates comites et barones babeant in terris suis in Com. Kanc. et quòd non ponantur in assis et juratis vel recognitionibus ratione forinseca tenura sua contra voluntatem suam; et quòd de propriss vinis suis de quibus negotiantur, quieti sint de recta prisa nostra, viz. de uno dolio vini ante malum, de alio post malum. Concessimus etiam, quòd nos, vel baredes nostri, non babeamus eustodias vel maritagia baredum suorum, ratione terrarum, quas babent instrà libertates et portus pradictos, de quibus facient servicium suum antedictum, et de quibus nos vel antecessores nostri custodias et maritagia non babuimus temporibus retroactis. Pradictam autem consirmationem et concessionem sieri sectmus, salva semper in omnibus regià dignitate, et salvis nobis et baredibus nostris placitis corona nostra vita et membrorum.

The other charter was made by the same king E. 1. viz. 28 April 26. E. 1. whereby he grants to the barons of the five ports for their service.

Quòd ipsi, et eorum bæredes barones eorundem portuum, de cætero sint quieti de omnibus tallagiis et auxiliis nobis et bæredibus nostris, de corporibus propriarum navium suarum et earum attilio * præstandis; et quòd de legalibus rebus et mercimoniis, quas ipsi intrà terram nostram Hiberniæ debito modo emere contigerit, nullus rebus et mercimoniis illis sit eorum particeps, nec cum illis contrà voluntatem suam inde particeps quoquo modo; et quòd omnes illi instra dictos 5 portus oriundi, licèt ipsi terras vel tenementa textrà libertatem eorundem portuum tenuerint per tale servicium per quod maritagia eorum tatione minoris ætatis ipsorum ad nos vel bæredes nostros pertinere deberent, se maritare possint sint occasione nostra bæredum vel successorum nostrorum, salvo jure alterius cujuscunque. And then sollows the charter of 28 April, 26. E. 1. touching the contributions of all ad navigium juxta sacultates, whereof before.

These be the principal liberties of the five ports. It is true, they had other liberties, which they claim by prescription. Some have been allowed, some disallowed, as, namely, a liberty that they claimed in nature of reprisal or without, viz. that if any of their members were injured, or unjustly imprisoned in London, they claimed by custom to attach and imprison any freeman of London found within their ports, till right were done to their co-

^{*} Attilio is in the manuscript. But Mr. Jeake, after observing, that the word is in Mr. Thynn's manuscript of this charter, substitutes articulo for it. Jeak. Cinque Ports, 39.— EDITOR.

baron. This upon folemn argument, 41, 42. El. C. B. was adjudged a void custom.

The charters mention some differences between the barons of the five ports and those of Great Yarmouth, which was principally touching certain privileges claimed by them of the five ports in the faire and herring-fishing at Yarmouth. These differences received several decisions by the king and his council, too long here to be inserted. One is mentioned in the charter of 6. E. 1. which was 20 May 5. E. 1. another the last of March 33. E. 1. Vide Pas. 6. E. 3. m. 19. Pat. 5. E. 3. p. 1. m. 1.

Touching the jurisdiction of the five ports, it is to be known, that each of the ports had their own particular court for matters respectively arising within the ports.

But besides that, they had a common court at Shipway, wherein there sat as judges the warden of the cinque ports and the mayors and bailists of each of their several ports, at which court there was a grand inquest returned, viz. two, three, or four, out of each of the cinque ports. And here they met as one common body; judgments were given by the common consent of the warden, mayors, and bailists, but pronounced by the warden; and to this court belonged cognizance of treason against the king, and of sale judgments given in any one of the cinque ports, and of subtraction of the service of the ships belonging to the ports. So that hereby and by the charter above recited it should seem, erroneous judgments, given by the particular ports, should be reversed before the warden of the cinque ports as above. Yet our books tell us, it was to be reversed before the constable of the castle of Dover, 30. H. 6.6. But it is not as constable of Dover castle, but as warden of the cinque ports; for both these offices are ordinarily in one person.

Touching their clause of exemption from being put in jurats, by reason of their foreign tenures; there was a charter afterwards, 12 Feb. 18. E. 1. which was somewhat fuller than the former. But in parliament E. 1. there grew a question touching the interpretation of these charters; and it was resolved in parliament,

That for their foreign lands which they had purchased, or should after purchase, they were to perform their services in juries, as other free-holders.

2. For the foreign lands they had at the time of the charter granted, they were exempt from juries. We as a many and the charter granted,

sufficient alledged within the five ports, it finall be tried by the vific next

upon their foreign tenures, and attended not their fervice in the ports; they were to ferve in juries.

4. But it seems by the judgment, that even for their foreign tenures which they purchased after, their personal attendance upon juries should be excused, so long as they were actually employed in service within the ports. Vide Rot. Parl. 50. E. 3. n. 172. Quare tamen de boc.

In the charter there are two special exceptions, viz. Salva dignitate regid, et salvis placitis corona; touching which, and some other things relating to the jurisdiction and exemption of the cinque ports, there are these things observable:

1. The liberty of the five ports doth not hold against the king's immediate interest; neither would it have so done, though this falva had been omitted; for the king's general grant is not presumed to exclude himself, without special words. V. P. q. E. 1. B. R. ros.

2. That although an appeal lyes in the cinque ports for some selonies, yet, if the desendant be at large in the county of Kent or elsewhere,
or in the custody of the marshall, an appeal may be brought in the
king's bench for a murder or other selony done in the sive ports, and the
writ shall be directed to the sheriff of Kent; and when issue is joined, upon a
surmise that the place is within the sive ports, ubi breve domini regis non
currit, and that such a place is the next visine, it shall be tried at that visine
next adjacent; and the sheriff of Kent shall return the jury, and not the
guardian of the sive ports; for although the sive ports be an exempt jurisdiction, yet they are part of the county. V. M. 44. 45. El. B. R.
Yelvert. Rep. n. 8. et Crook, n. 22. Crispe et Verrol, T. 43. El. Brayne's Case.

3. In inditements for felony or other matters before the mayor and jurats of the five ports, a certiorari lyes to remove them into the king's bench; for those pleas are before them as justices of peace: but otherwise it is of civil suits, which are in their courts; and the writ shall not be directed to the warden of the five ports, but to the mayor, &c. of that port where the inditement depends. Only, if it be such a crime wherein they have jurisdiction, the court may and do remand it; but if it be of such a felony as is not within their jurisdiction, viz. a felony made such after the grant of their franchise, as buggery, &c. there it shall not be remanded. P. 8. Car. B. Regis. Crook n. 3. & T. 8. Car. ibidem n. 13. Tindal's Case.

4. If in a civil fuit, in the courts at Westminster, iffue be joined upon a matter alledged within the five ports, it shall be tried by the visne next adjoining,

adjoining, by a venire facias directed to the sheriff of Kent or Sussex, where the port is, 32. H. 6. 26. But if a man hath a judgment in the king's court, against one that hath lands in the five ports; the record shall be removed into the chancery by certiorari, and thence sent by mittimus to the constable of Dover castle, to make execution. M. 3. et 4. P. & M. Bendl.

- 5. And it should seem, that although mention be often made of the constable of Dover castle, as the immediate party to whom those concerns of the five ports belong, it in truth concerns him not so much as he is constable, but as he is guardian of the five ports, though commonly the same man be both.
- 6. That notwithstanding the exemption of the cinque ports, yet they are liable to make execution of the king's mandatory writts; especially in matters relating to the liberty of the subject, or in matters of state. Vide mandate to deliver a party causeless imprisoned there, Clause 21. E. 1. m. 5. Vide inter placita parliamenti 33. E. 1. libro parl. where Michaelis de Seagrave was imprisoned by the warden of the five ports, by the king's precept, within the precincts of Dover, and after rescued by the barons of Dover, upon pretence of an arrest contrary to their liberties; and they were fined to find a ship four months for this contempt.

Vol. I.

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PARS

ACMUDAR BULL N. of slaint, by a make finise decided to the menth of Best or Suffer we greate process gas 12 for all Buc, if a light a letterate because Berg george Come and the best finite the part of the part of the property of the first of the comments of the at residue to a long of a late on the analysis of any beautiful. . A William to Hill according to the world look there is c. And flotel ferre, the althour itementical confirmation is dentiled the at the second of the property of the property of the property of the party of t the control of the first of the first of the profit of the profit of the first of the man \$10 (1964) (p. p.m.ko diseas) projectiva na 10 milione in no milion well sty area untained to poligonee stage Louiseiwto ap flow, After 1969 Common Fred County (Fred Solit, 1971) and the contract of state of the county of the count great to attend of the Company and the imposit, and the greater attenual Company of the second profession of the second seco All being as Brigging was implified by the career in the live of the of the set of the second to the set of Dover and the set of the set of the with the first of very poly from the managiness cause, newly so that is still Analysis of unique element morphism but a facilities with act took the talk with a track in the little to the THE STATE OF THE STATE OF THE STATE OF angel (1874年) 1986年 (1874年) 1886年 (1884年) 1886年 (1884年) 1886年 (1884年) 1886年 (1884年) 1886年 (1884年) 1886年 (1884年) the party of the few or areas of the arrange and the party beginning them. Self School Fred Charles · Is I supposed to the supposed with Prince was figure as in action sharp with the bit to be BERTHER BY AND THE the state of the s the Earlie Court of the State of the August of the State THE RESIDENCE OF THE PROPERTY and the same was to be designed to the same of the matter of

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Concerning the customs of goods imported and exported.

my denist would ron CarA P. com H.

The order and method of the whole ensuing discourse.

I AVING in the former Part, as preparatory to this, gone through the examination or history of the ports, I now descend to the history or narrative of the king's customs, in which I shall proceed in the order ensuing.

The customs, that have belonged to the crown of England as part of the revenue thereof, are of two kinds, viz. the inland customs, or the maritime customs.

The inland customs, as I may call them, are those prerogative revenues, that arise within the land for the maintenance of the royal state; of which some are ancient and fixed in the crown; as goods of selons, sugitives and outlawed persons, waises, strays, tolls of several sorts, &c.: some casual or occasional; as hideage, cranage, escuage, tallage of his demesses, tenths of boroughs, sifteenths, subsidies, &c.

The maritime customs were of two kinds, viz. such as were fixed and hereditary, or such as were casual and temporary.

The fixed or hereditary feem to be of these kinds, viz.

- 1. Such as are fettled in the crown by the common law. Such is that of prifage.
- 2. Such as are settled in the crown by special custom. Such are those customs of ports, that by prescription or usage are due to the king, or other lords of ports by derivation from him, expresly by charter, or implied by prescription.
- 3. Such as are settled in the crown originally by act of parliament; as the great customs of wools, woolfells, and leather.
- 4. Such as in their original were only by impositions, but by long usage have obtained the reputation of a right; as the custom of cloth.

2.2

5. Such.

5. Such, as are fettled by composition or contract, were those that were fettled in the crown by carta mercatoria by merchants aliens.

Of these I shall discourse under the several periods of the times wherein they began and took place, and shall shew their original growth and interruption, according to the several series of the times relating to them.

The casual or temporary duties were such as had no certain or fixed continuance; and they were of two kinds, viz.

1. Such as were granted by parliament, sometimes for years, sometimes for life; sometimes in one proportion, sometimes in another; as the various subsidies of tonnage and poundage.

2. Such as had the inception by imposition by the king's grant of patent, either in the intermission of these substitutions, or by way of accession to or augmentation of them; as upon wines principally, began by queen Mary, and variously continued by intermediate vicissitudes until this time.

These also I shall take up in order, and in series of time, as they arrive, with the several laws occasionally made with relation to these duties, as they occur in order of time.

And because prisage of wines seems to be an ancient substantive duty taken by the crown in all times, I shall begin my discourse with that duty. Then I shall descend to those customable duties arising by usage in several ports. And then I shall take up the consideration of those other customs, both certain and temporary, according to the order and series of their several times, and the several kings reigns in which they began, or were augmented, diminished, repealed, revived or altered. And when I have gone through these, I shall have sinished what I intended in this particular, viz. è profundo antiquitatis antro vectigalium maritimorum origines ac progressius in Anglia extrabere ac luci reddere.

C A P. II.

Concerning prisage of wines; its nature, original, and progress.

PRISAGE of wines is an ancient inheritance of the crown of England; and is no part of that prerogative which is called purveyance, to take provisions for the king's household; but it is a fixed settled inheritance, though possibly in its original it might take its rise from thence.

And therefore it was agreed, 40. 41. Eliz. in a quo warranto against Haughton, who had the prisage of London and the ports adjacent, and the office of butler there, for years by the king's grant, that it was grantable for years or otherwise. In Ireland, it hath been received to the use of the crown by the family of the Butlers, now earls of Ormond, being the king's chief butlers of Ireland by tenure.

It is called in old statutes and charters resta prisa vinorum, and sometimes rerta prisa, viz. two ton of wines in every ship laden with 20 tons, one before the mast, one behind, paying 20s. pro quolibet dolio. Vid. cartam 18. H. 3. civibus London. Concessimus insuper eisdem civibus, per totam terram et potestatem nostram, ubi veniunt cum aliquibus mercandisis, ac etiam per omnes portus maris tam citra mare quàm ultra, quòd quieti sint de theolonio et lastagio et omni alia consuetudine, excepta antiqua prisa nostra vini, viz. unius dolii ante malum et alterius retrò malum, viginti solidis pro dolio solvendis.

This twenty shillings per ton is at this day turned into the payment of freight, as I take it.

In this fection I shall declare,

I. Of what prifage is due.

II. Of what quantity and by what proportion it is due.

III. In what manner to be taken.

IV. When it becomes due.

V. What remedy for it.

VI. Who are discharged, and by what words.

VII. Who may have it in point of pernancy, and by what title.

I. For the first of these, it seems it is due of all sorts of wines; although, Rot. Parl. 8. E. 2. m. 16. it seems there was a question made, whether this prerogative extended to Renish wines, or only to Gascoign wines. But it seems that it extends to all sorts of wines; and so it hath been ruled.

II. For the quantity of which it is to be taken, in the parliament-roll 1. H. 4. n. 161. and 2. H. 4. n. 109. it is recited in a petition of the commons, that this duty commenced by grant in parliament (but it is not shewn when and where); and that by that grant it was proved, that of every ship laden with 30 tons of wine, the king should have one ton before the mast, another behind the mast; and that it was so used until about the 17. R. 2. when John Waltham, bishop of Salisbury, treasurer, torceousment et sans authority de parlement sist le botteler prendre in chescun port devert le South et West, de chescun 10 tuns 1 tun, et de 20 tuns 2 tuns, pur le prise, encounter les usages; and that judgment had been given in 16. 17. R. 2. in

exchequer against some Western merchants accordingly; and they pray remedy. All the answer that could be obtained to both these petitions was only, soit use come ad este use devant ces beures.

But certainly the constant practice and right hath been, for the king to have two tons for prisage of every ship laden with twenty; and accordingly it is declared in the bill that passed both houses, 17. Car. I. for tonnage and poundage.

And as to the taking of one ton of every ship laden with ten, it hath been the constant practice of the farmer of the prisage to take it accordingly; and very many decrees in the court of exchequer are in affirmation of it. And accordingly in an old book manuscript, intitled, Consucrudines et Usu ville Sandwici, begun by Adam de Campney 29. E. 1. but continued to the latter end of E. 3. viz. fo. 3. Item dominus rex babet ibi prisam suam, et custodem prise sue, qui capit prisam in bunc modum: de qualibet nave carcata vinis, utrum fuerit parva vel magna, dammedo gerat 20 dolia, et venerit vel de partibus Vasconiæ vel de aliis portubus ubi vina crescuntur, et velit ire ultra mare vel ad locum aliquem in Anglia ubi custos prife forte non eft constitutus, vel si debet discarcari in eadem villa, unum dolium, quod eligere voluerit ante malum, et aliud dolium post malum, solvendo pro illis duobus doliis 40s. scilicet 20s. pro'utroque. Solet tamen ipse custos eligere duo dolia pro 403. ut prædictum, vel unum dolium et nibilo, sed aliud non est recla prisa. Si autem fuerint in dista nave 19 dolia vini, non capiatur de illis nifi unum dolium pro 20s. et si fuerint 10 dolia vini, capiatur unum dolium ; si verò o dolia vini fuerint, nulla prisa capiatur. Et ab istà prisa sunt omnes barones quinque portuum liberi.

And in an ancient manuscript book, that I have seen, touching the customs of London, written about the middle of king E. 2. there is this memorandum touching prisage. La pris de vines al oeps le roy. Si o tonneaux de vin venent, ou meins, en un neife ou en un bat, le chamberlein le roy riens prendra à la prise le roy per droit; si 10 tonneaux de vin venent, il doet prendre un tonnel; et si 19 tonneaux venent, il ne prendra forsque un tonnel; en 20 tonneaux le chamberloin prendra 2 tonnells; et fi 100 tonneaux au 200 ensemble en un neif venent, le chamberlein le rcy ne doet prendre forsque 2 tonneaux ; et si un grant neif, que vient ove vines, se voil discharger en batteaux avant que it veigne en bavene, et la neife suive les batteaux ove les vines remanants deliver al bavene, le chamberlyn ne doet prendre ne de la veife ne des batteaux fors un sol prife; et si de les mariners de la neif ou de les batteaux la prise le roy eit eftre prise à Sandwic ou à aucun autre port de la mere per le chamberlein ou per atetre boyly à ceo autorife per le roy, ne doet le chamberlein riens prendre à Londres, mes per tout le power le roy doivent les merchants, à que les vines sont, estre quites

quites per la primère prise; et quant 9 tonneaux ou 19 tonneaux venent à London en bat. bien list al chamberlein de prendre le siance ou le serement de merchants, à qui les vines sont, que eux ne sont ne se sont en tiel manner faire vener les vines per parcel pur toller ou pur eschuer le prise nostre seigneur le roy.

But if less than 10 tons be laden in any ship, the king is not to take any prisage pro rata, but the merchant is to be discharged thereof.

Yet if the lading of the ship with a smaller proportion than ten were apparently fraudulent to deceive the king of his prisage, there have been several decrees in the exchequer-chamber, for the relief of the king and his farmer against such fraudulent lading, and for a proportionable allowance to the king or his farmer, though the lading of the ship were under ten ton *.

For instance: a merchant at the port of A. in France hath 20 ton of wine to send for England to the same port, viz. to the port of Hull or any other port; and there are several ships in the port of A. bound for the port of Hull; and the merchant may have stowage if he pleases for all his wines in one of these ships, but he will lade them all in three several ships bound for the same port, viz. eight in one ship, six in another, and six in another, all bound for the same port: in this case, though in strictness of law no prisage be due, yet the king shall have his full prisage made good to him, by decree in the exchequer-chamber; for it is apparent fraud to deceive the king of his duty. And accordingly it was decreed in the case of fir William Waller and a merchant of Hull +.

But if there be several proprietors of several wines under 10 ton a-piece, though in all amounting to 10 or 20 ton, and they lade them all in several ships under 10 ton in a ship to the same port; or if the same man be proprietor of several parcels of wine amounting to 20 ton, and for want of stowage in one ship lade them in several ships in small parcels upon necessity, though all bound to the same port; here the wine shall not be charged by computation with prisage. But then it is incumbent upon the merchant to make it appear, that he was constrained by necessity to a division of them; because otherwise, coming from the same port to the same port, at the same vintage, or at or very near the same time, it carries a presumption of fraud prima facie. But if they be the wines of the same proprietor, and come from several ports, or to several ports, or from the same

See acc. the Attorney-General v. Shirt, Hardr. 56. and the precedents there cited; and also the Attorney-General v. Horsham, ibid. 477. - EDITOR.

[†] This same case is reported in Hardr. 218 .- EDITOR.

port to the same port at several considerable distances of time, then no such fraud is presumed; and therefore he shall not pay prisage for all his wines by way of computation of all the quantities together.

If a man lade aboard a ship about 9 ton and under 10 ton, yet by the help of the court of equity the king shall have one ton for prisage, though it be under ten; because by the constant practice of the exchequer it hath been held a covenous lading; and so frequently decreed; but in that case the king cannot seize, but must relieve himself in the court of exchequer-chamber.

III. In what manner to be paid or received.

- (1.) Although the usual expression of prisage when a ship is laden with 20 ton is, that one ton shall be taken for prisage before the mast, another behind the mast; yet the king or his butter is not bound to take them in that order, but may take them both behind or before the mast: for otherwise the merchant might deceive the king by covenous placing of his wines; and this is but the circumstance; for if there be but ten tons aboard, the king shall have one for his prisage: and that was accordingly resolved upon demurrer H. 8. Jac. B. R. Kenicot et Bogan, reported by justice Yelverton.
- (2.) The king is to pay for every ton taken by way of prisage 208. which, as it seems, is for freight.
- (3.) The wines taken by the king or his farmer for prifage ought to be discharged of custom and subsidy; for prisage is a kind of custom itself, and it is no reason that custom should be paid for custom. If it should be paid by the merchant, he should be charged for custom for what belongs not to him but to the king; and it is impossible, or at least improper, for the king or his farmer to pay it to himself.
- (4.) If ten several merchants lade in one ship each of them a ton of a several kind of wine, the king may seize which ton he please, though it may be double the value to any of the rest; and the merchant, whose wine is seized, shall have average, or a rateable contribution, from the other merchant whose wines are spared, by decree in the court of exchequer-chamber.

IV. As to the time when it becomes due,

- (1.) It is not due by the lading of the wines aboard in France or Spain, or other foreign countries.
- (2.) It is not due by the coming into the narrow feas, or the king's dominions.

(3.) It hath been doubted, whether the duty be not due by the importation into the port.

P. 9. Jac. B. R. Waller and Hanger, reported by divers reporters *. The citizens of London are by charter free from prisage. A citizen having wines at sea and others in the port dies before bulk broken.

1. It was held first, that for the wines abroad at sea the executor should be chargeable, because the duty is not due while they are vina civis; though others thought, that the executor by right of representation should be discharged of the prisage even of those, when afterwards upladen

2. As to the wines in the port, the court was divided. Two justices held, that the duty was not due till bulk broken, though the goods were in the port; and consequently, the executors not being citizens at the time when the duty became due, they could not partake of the privilege granted to citizens.—The other two held, they should be discharged by virtue of the privilege granted to the citizens. First, because they supposed the duty due by the bringing of the wines into the port by way of merchandize, or at least so far fixed that they might be said bona civium at least when the duty was fixed, though perchance the unlading might be a circumstance requisite to the ascertaining and compleating of the duty. Secondly, because the executor standing in locatestatoris is possessed in right of the testator; and so though the duty should not be compleated before bulk broken, yet at that time they were bona civis.

And though the court of king's-bench were divided in opinion, yet before that, M. 6. Jac. in Scaccario, it was ruled, that the executor should be discharged of prisage; but principally upon the last reason, because the executor hath the wines in right of him that was a citizen; but not upon the point of the compleating of the duty by the importation into the port.

(4.) When bulk is broken, then, and not till then, prisage is due; for till then the merchant hath not sufficiently ascertained whether he means to trade in that port, and it may be he may go to some other harbour: but when bulk is broken, that is, when the goods or part of them are unladen to be laid on land, then there is a plain evidence appearing that he means to fix on this as his port. And accordingly the law hath been always held,

^{*} This case is very fully reported in 3. Bustr. 1. 1. Ro. Rep. 138. and Cathr. Rep. 1. It is also reported, but not so much at large, in Mo. 832. It is cited and shortly stated in 1. Sid. 130. and Hardr. 302.—EDITOR.

that if the merchant unlade any part of his wines, though he unlade not all, yet prifage shall be paid for the whole lading of that ship.

Claus. 40. E. 3. m. 22. pro Stephano Ward. The case upon the record appears to be thus: The prince as earl of Chester had prisage of wines unladen within any port in Chester. Stephen Ward, merchant, brought some wines from Bourdeaux to Liverpoole in Lancashire, et certa dolia vinorum eorundem ibidem discarcasset, ac Ricardus de C. pincerna noster prisas nostras de omnibus vinis in câdem navi existentibus ad opus nostrum recepisset. The merchant went to Poole in Cheshire with the residue of his wines, and the prince's officers demand prisage of those wines that were brought thither; but were prohibited by the king's writ, because the prisage was formerly paid to the king for the whole ship's lading, though only part were unladen.

And that is the meaning of that writ, 1^{m2} Pars Pat. 28. E. 3. m. 21. Rex omnibus salutem. Quia de solutione prisæ nostræ vinorum in regno nostro Angliæ, &c quoties et ubi sieri debent, multis vertitur in dubium; nos, ad tollendum bujusmodi dubium, vobis, et omnibus quorum interest, innotescimus per præsentes, quòd ubicunque instrà regnum nostrum Angliæ navis aliqua vinis carcata applicuerit, et prisa nostra de vinis illis semel ibidem ritè soluta fuerit, et de solutione prisæ prædictæ per litteras pincernæ nostri vel alio modo legitimo constare poterit, si navis illa cum vinis illis alibi in eodem regno postea applicuerit, prisa nostra prædicta de vinis prædictis capi non debet. Claus. 31. E. 3. m. 11. pro mercatoribus Hiberniæ.

For where the bulk was first broken, the prisage was taken of the whole lading.

And with this agrees the resolution of the case of Kennicott and Bogan, H. 8. Jac. B. R. before cited. In trover and conversion for a ton of wine, the desendant pleads, that the king is seised in right of his crown of the prisage of wines, viz. out of every ship importing into any port from any parts beyond the sea ten ton of wine, one ton; and out of every ship importing 20 ton into any port et ibidem exonerat. two ton, the one before the mast, the other behind the mast: and then shews the grant of the office of chief butler to sir Thomas Waller to take prisage, &c. and that there were imported from Bourdeaux into the port of Exeter in a ship 20 ton of wine, and that nine of them were unladen, and that two ton were due to the king for prisage, and that the desendant took them and converted them, &c. Upon demurrer these points were resolved:

yet he shall pay prisage for the whole; for if the bulk be once broken, it sufficeth to the king for all the prisage.

2. Although his plea be special for all unladen, yet it is good enough

to entitle the king if part be unladen.

3. That though his plea be special, viz. for one before the mast, another behind, and the averment be general, yet the plea is good; for the

king may take his prifage in any part of the ship.

And although by the statutes of 28. E. 3. cap. 15. 20. R. 2. cap. 4. and the first rule in the book of rates, if a merchant breaks bulk and unlade part of his goods, he shall not pay subsidy or custom for the residue; yet these laws extend only to customs and subsidies, and prisage comes not under the name of customs in those acts; and therefore if bulk be broken in part, he shall pay his prisage for the whole lading. And thus it hath been accordingly used, though it seems it ought to be intended of breaking bulk of part of the wines, not of the other commodities of the ship's lading.

But in some cases the breaking of bulk, or unlading of part of the wines, doth not entitle the king to prisage for the rest, viz. in these cases:

- 1. In case of necessity. As if the mariners unlade part by reason of a tempest or leak of the ship; this is no breaking of bulk to entitle the king at least to his sull prisage of the residue, because not done to the intent to trade, but for necessity.
- 2. In case of a custom or usage.—Trin. 33. E. 1. B. R. rot. 85. Hibernia, the custom of payment of prisage in Dublin. The use there is, if a great ship laden with wine come for the port of Dublin, because the haven is not able to bear a great vessel with his sull lading, they use to unlade part at Dalkey, and send it in by lighters into the port of Dublin, and no prisage is paid for this till the ship is come with the rest of his lading; and then the king's officer takes his sull prisage of the wines brought in by the lighters, or of the rest of the ship's lading, at his election, but no sale to be made by the merchant till the prisage paid.

And thus much shall serve touching the time when the duty grows due.

V. Touching the remedy for prisage, the proper remedy is seizure by the king's officer; and thereby the property is changed. But if the officer be hindered from seizure, or if the king's duty be stolen and not paid, it doth not induce any forseiture of any of the other goods that come, as it doth in cases of customs, as shall be shewn in due time. But the king

or his farmer may have an action of trover and conversion; or an information lyes against the merchant to recover the value, and against those that hinder the king's officer in seizing the prisage, whereupon the party convicted shall be fined and imprisoned. And this is frequent at this day, and very ancient. Vide Hill. 7. E. 1. rot. 14. the case of the abbot of Melsa, against whom an information was exhibited in the king's-bench for hindering the king's officer to take restam prisam vini domino regi spessantem, viz. de uno dolio vini ante malum et alio post malum. Vide Hill. 13. E. 1. B. R. rot. 2. Bristol. But for customing wines in the names of those that are free from prisage, a punishment is ordained per statute 1. H. 8. c. 5.

And thus much also for the remedy. Only I shall add this, that in case of covenous or fraudulent parcelling of wine, or lading of above 9 ton and under 10 ton, whereof before, the usual remedy hath been by English bill in the exchequer-chamber, being a court of revenue; where, if the fraud appears, the value of the wines justly due for prisage hath been commonly

decreed to the king or his farmer against the merchant importer.

Touching the discharge of prisage, and the liberty of prisage translated to a subject, which are the points remaining for the absolving of the enquiry touching prisage, it shall be declared in the next chapter.

C A P. III.

Touching exemption from prifage, and the translation of the duty itself to a subject.

THE duty of prisage is a prerogative of revenue belonging to the crown, as hath been said in the former chapter. But yet it is not so inseparable from the crown, nor so personal to the king, but that it may be discharged or transferred. In this chapter therefore I will set down these two things, viz.

- I. How it may be discharged.
- II. How transferred.
- I. Touching the discharge of prisage I will set down these things :
- (1.) The manner how it may be done; and
- (2.) Who are those that have the discharge of prisage, and how far that discharge extends.

(1.) Touching the former of these, how this discharge may be had, I shall set down the learning thereof in these ensuing propositions.

1. A man cannot have a discharge of this duty simply by prescription; because it is an inheritance due of common right to the crown. And so it was accordingly ruled M. 6. Jac. in Scaccario, in the case of the town of Fowey in Cornwall.

2. Though a man cannot have a discharge thereof by a simple prescription, yet he may in some cases have it by prescription by reason of another thing. As he that hath a county-palatine by prescription, may have a discharge of prisage by prescription; for he may by prescription have prisage in point of pernancy, as shall be shewn.

3. A man, or town, or corporation, may have a discharge of prisage by charter; and this is without all question, as shall be shewn. If the king grant to the mayor and commonalty of the city of London, quod omnes cives civitatis pradicta shall be free of prisage, though the charter be granted to the corporation, yet the exemption is well transferred thereby to particular persons; and so in case of a discharge of toll, of putting into juries, and the like privileges of discharge.

But, 4. Although the king may grant an exemption from prifage, yet it ought to be by special words mentioning prisage; for general words of all customs, or words relative to the liberties of others that have that exemption by special charter, will not serve. - Vide the case of the Venetian merchant cited by Tanfield, Davis Rep. 17. to have been adjudged in the exchequer. The king grants to a Venetian merchant, that he should be quit de omnibus custumis subsidiis et impositionibus et omnibus aliis denariorum summis debitis et solubilibus pro quibuscunque mercandizis importandis; and that he shall be as free as the citizens of London: and by colour of this he claimed to be free of prifage; because by special charter the citizens of London are free of prifage. Yet it was adjudged, that this did not discharge him of prisage; because prisage is not specially expressed in the same grant. - Perchance the case might be of butlerage; because merchant-strangers have an exemption from prisage. But be it one or the other, it will be alike in both; for neither butlerage nor prifage will be discharged without special words.

(2.) As touching the second matter, viz. who have such discharge of prifage, and how far their discharge extends. It is true, there was once an attempt, that all the king's subjects might have been discharged of prisage, paying for every ton of wine prisable 20d. and for every pipe 6d. at the ports of discharge, as aliens paid. Rot. Par. 16. R. 2. n. 29. And it came

near to a bargain; for the king's answer was, s'ils voillent payer deux souldz per chescun tonnel de vine permy le realme, si bien deins franchises come de hors, le roy voet qu'ils soient quitts de sa prise, et si non soit use come devant. But neither after took effect; and so it stands as it did before.

There were three great bodies that had an exemption from prifage.

1. Merchant-strangers who by the carta mercatoria of 31. E. 1. which we shall see hereaster mentioned at large, were discharged of prisage, and by contract were to pay nomine custumæ 25. de quolibet dolio vini quod adducent vel adduci sacient intra regnum, which 25. per ton is commonly called butlerage.

2. The charter of exemption granted to them of the cinque ports, 1. E. 3. viz. to be quit of toll per totam terram et potestatem nostram; et quòd non ponantur in assista ratione forinseca tenura contra voluntatem suam; et quòd de propriis vinis suis de quibus negotiantur quieti sint de restà prisà nostra, viz. de uno dolio vini ante malum, de alio post malum. It is true, that the cinque ports claimed an exemption of prisage long before by prescription, but it was never fixed till this charter, viz. Claus. 1. E. 1. m. 5. Touching this exemption, it is to be observed:

1. That this exemption from prisage, did not extend to butlerage, neither doth at this day: and therefore, Communia P. 7. E. 3. in Scaccario, inter Rodman de Poole pincernam regis et Petrum Garcy, et alios comburgenses de Sandvico, it is resolved, that where a merchant alien was made a freeman of one of the cinque ports, yet he ought to pay butlerage; for the alien was discharged of prisage by a contract paying 2s. per ton; and the exemption granted to the cinque ports expressly from prisage, would not be construed to extend to butlerage, which was another thing, though arising in respect and compensation of prisage.

2. That this exemption extended, and extends at this day only, to those wines that are brought into the cinque ports: and therefore, if a merchant of one of the cinque ports import wines into his own port, or any other of the cinque ports, he shall be discharged of prisage by virtue of the charter; for as they claim and have their liberty by one common charter, so they are to this purpose but one common port; and so the freeman of one of the cinque ports shall have the exemption in another of the cinque ports. But if a freeman of the cinque ports import wines by way of merchandize into the port of London, or into any other out-port, not parcel of the cinque ports, he shall pay prisage; for the privilege was given in respect of the place principally, and not of the person. And accordingly it was ruled upon great debate in Camerar. Scaccarii, T. 7. Jac. in Swinerton and Thornbull.

3. It doth extend only to fuch as are truly members of the cinque ports, and pay fcot and lot there; and therefore anciently those of the cinque ports were fined, if they did colourably admit any person to be a freeman of their ports, that was in truth no inhabitant, merely to gain the privilege, viz. s advocare voluerint aliquem de libertate sa esse qui non est.

3. The third charter of exemption is that which was granted to the city of London in the same year, viz. 1. Ed. 3. which runs thus: Pro melioratione civitatis nostrae London. &c. concessimus, Quòd iidem cives nostri de auxiliis et contributionibus, &c. sicut homines burgorum, et quòd contribuant cum communitate regni nostri sicut homines comitatuum*; et quòd de omnibus aliis tallagiis sint quieti; et quòd nullus captor faciet aliquam prisam in civitate prædicta vel extrà de bonis civium, nisi statim debitam faciunt solutionem; et quòd de vinis civium nulla prisa siat per aliquem ministrorum nostrorum, vel hæredum nostrorum, seu alterius, contrà eorum voluntatem, viz. de uno dolio ante malum, de alio dolio retrò malum, seu aliquo alio modo, sed inde perpetuò sint quieti. Probibuimus etiam, quòd nullus officiarius, seu provisor nostri, hæredum vel successorum nostrorum, mercandizet infrà civitatem vel extrà.

Upon this charter the same conclusions are to be made as upon the former of the cinque ports, viz.

1. That if an alien become a freeman of London, yet he is chargeable with butlerage, notwithstanding this exemption.

2. That a freeman of London shall not, by virtue of this charter, be discharged of the prisage of wines imported in Bristol, or any other outports; but his discharge extends only to wines imported into the port of London, whereof he is a citizen. It is true, that Rot. Parl. 11. H. 4. n. 73. Chaucer, being then the king's butler, exhibited a petition in parliament for the declaring of this exemption to extend only to citizens resient et demurrant deins le citty; which was accordingly declared. But in that petition he recites, that they of the cinque ports and London are enfranchises en yeelle bien et franchment aller avec lour vines là, ou lour plerra, permy le realme d'Angleterre, sans ascun prise à nostre signior le roy ent paier.

But as in the case of the cinque ports before mentioned, it was ruled, that the exemption of the cinque ports did not extend to wines imported in-

The preceding passage is exactly agreeable to the manuscript. But I think, that the manuscript is erroneous. In the published charters of London, the translation of the passage here intended to be given is, that the citizens "shall be taxed and contributory with the commonalty of our realm as common persons, and not as men of the city;" which word not I take to be necessary to the sense of the charter, though not conformable to the transcript of Lord Hale's manuscript.——EDITOR.

to other ports; so in Michaelmas 4. Car. 1. in the exchequer-chamber, between Sir William Waller and ————, a case was made upon an English bill there preferred, wherein the question was, whether the exemption of the citizens of London, by the charter of the 1. E. 3. or otherwise, did extend to wines imported by them in Bristol or other the out-ports; and after several arguments, it was una voce resolved by the barons as followeth, viz.

1. That the king, by special words, might exempt the citizens of London from prisage in the out-ports, viz. if the words had been quòd de vinis civium nulla prisa fiat infrà civitatem vel extrà, as some other exemptions in the same charter are penned, viz. that of exemption from purveyance

without present payment.

- 2. But that this exemption from prifage doth only extend to their wines imported into London, and not into the out-ports. First, because the charter is granted in tuitû civitatis, not persona; for it is pro melioratione civitatis: but if this privilege should extend to the goods of citizens imported in the out-ports, it would carry the trade of wines from the city. Secondly, because in the clause precedent touching purveyance, and subsequent touching purveyors, the words are express, tam infra civitatem quam extra; which words, omitted here in this clause, evidence that it should not be extendible extra civitatem. Thirdly, because prisage is an ancient revenue of the crown, and the charters of exemption thereof shall be construed strictly, and so it hath been in all ages; and therefore it was decreed for the king and his farmer, answerable to the case of the exemption of the cinque ports before recited.
- 3. That bona civium must not be intended of every freeman of London. But first, he must be a freeman of London. Secondly, he must be a freeman and inhabitant of London; for though he be a freeman, yet if he inhabit out of London, he shall not be exempted from prisage even for the wines imported into London. And accordingly it is declared by that judgment of parliament, Rot. Parl. 11. H. 4.n. 73. Est declare per le roy per avise des seigniors in parlement, que nulle n'eit ne enjoy se tiel franchise en cest case, que ne soit citizen resiant et demurrant deins mesme la citty, et que touts autres demurrants en autres cittyes burgbes cu villes eint et enjoysent lour franchis eux graunt, savant tout dit à nostre seignior le roy son inheritance in cest case; and accordingly it was agreed in Hanger's case, 9. Jac. B. R. before cited. Thirdly, he must not only be a freeman and inhabitant, but he must also be a householder within the city. And therefore, P. 43. Eliz. in Snede and Sacheverall, a freeman of London, living in London as an inmate, shall not have his exemption; for such a man contributes not to scot and lot, nor is be-

neficial to the city; and this privilege was granted intuita civitatle, not perfond; and the grant being in diminution of the king's revenue, shall be construed as strictly as may be, and the word civis be taken in as restrained exposition as it will bear.

And thus much concerning the bufiness of discharge of prisage.

II. Touching the right of having prifage in pernancy.

(1.) It is clear, that, by an express charter of the king, prisage may be claimed by a subject, as well in point of inheritance as for a term of years. And this hath been agreed in all those cases, wherein the king's farmer of prisage hath been plaintiff or desendant: but then as in case of a discharge, so much more in case of a grant, there must be express mention of prisage. General words of omnes consuctudines, or custumas, or prisas nostras in tali villa, will not carry this royal franchise, 6. H. 3. 51. in the case of the archbishop of York. For the king had certain customary duties in ports, that were called prisa, as prisa piscium, prisa bosei, &c. but the prisage of wines is commonly expressed prisam vini, and most commonly restam prisam vini.

(2.) Touching a title to prilage by prescription, it seems it cannot be acquired barely by prescription without a charter to bottom it. For as a discharge of prisage is not acquirable by prescription, because it excludes the king of a fixed settled prerogative; so much less can it be acquired by a bare prescription in point of pernancy; for that doth not only deprive the king of it, but lodgeth it in another person. But,

1. Such a kind of prisage, as consists with his majesty's resta prisa, may be acquired by prescription; because it doth not exclude the king's duty, but superinduceth another consistent with it. Such, possibly, might that be which we find mentioned 6. E. 3. 51. per Aldeb*. allowed to the archbishop of York; who, though he disclaimed the king's prisage, claimed the first tast and achase under the name of prisage, which was allowed to him; for that was only a prisage in name, not that resta prisa vinorum, whereof we have hitherto treated.

The case of the archbishop of York touching the prisage of wines, appears to be thus.—The king grants to the predecessor of the archbishop of York, prisas suas in aqua de Hull. In the eyre of 15. E. 1. the king brought a qua warranto against the archbishop of York, to set forth by what warrant he claimed prises de vine in the port of the water of Hull. The archbishop came in person, and said, that he claimed nothing in the prise of wines per nosme de prise de vines eins le primer tast et achate de vines. And afterwards

^{*} Aldeb. was one of the speakers in the case here cited; but Schard was the counsel who stated the archbiship's claim.—Epitor.

the 4. E. 3. in eyre upon a new que warranto against the archbishop for the primer tast et achate de vines, il dit, qu'il claime le primer achate et tast après le prife de roy des vines; et dit, qu'il et touts ses predecessors ont estre seifies de temps dont memory, &c. After this the archbishop, upon the vein of his charters, did, notwithstanding these disclaimers, pretend title to the very prifage of wines, viz. one ton before the mast and one ton behind. Upon a que warrante against the archbishop for the prisage of wine, the archbishop made default; and thereupon the franchife feized. Upon a petition in parliament the archbishop was put into possession, upon condition that he should answer the king in a quo warranto for prisage. A quo warranto was thereupon brought against him in the common-pleas, which we find begun Hil. 6. E. 3. fol. 11. The bishop made his title to prisage by the before-mentioned charter of prifas fues in aqua de Hull, and averred that he and his predecessors had enjoyed prifage of wines ever fince. For the king those judgments in eyre were alledged, and judgment demanded, inafmuch as the king's charter had not in special words prisas vini, whether it passed. Judgment was given for the king, wherein these points were resolved, viz.

1. The general grant of prifas noftras will not of themselves extend to bals prilage of wines, wireless by and a descript and a direction of sality for a restrict the

2. Though possibly a long usage of enjoyment of prisage under such an ancient charter, might have expounded it to extend to prifage, if there had been nothing else in the case; yet a charter within time of memory of prifas poliras, when the archbishop himself of record had disclaimed to have prifage by virtue of that grant, is a stronger evidence against the usage, that it hath not that interpretation.

3. But it feems there admitted, that fuch an ancient charter with an immemorial usage concurrent had been a good title but the plea being entered ut supra judgment was given for the king, M. 6. E. 2. fo. 51. Vid. Clauf. 7. E. 3. pt. 1. m. 14. a kind of sequestration of butlerage and prisage in the port of Hull, between the king and the archbishop, till that plea

determined.

But after this judgment the bishop fat still and claimed not prifage; though, as to the franchise of the port and other liberties by him claimed in the water of Hull, he brought actions afterward, Michaelmas 44. E. 3. R. R. Rot. 24. Ebor.

2. Though possibly prescription alone is not sufficient to intitle to prisage. yet it may by prescription be belonging to a county-palatine that is by prescription.

Upon this title the earls of the county-palatine of Chester enjoyed prifage of wines in the port of Poole, being a port of that county-palatine. Claufe 40. E. 3. m. 22. pro Stephant Ward. The cafe is ched above upon another occasion. Angest traderon wave an energy with the cafe is ched above upon

Upon this title also the bishop of Durham claimed, and for aught appears enjoyed prilage of wines in his port, Communia Trin. 6. E. 3. Northumbr. Memorandum, quod cum dominus ren de jure coronie fue babere debet rectans prisam suam de vinis applicantibus in regnum suum, viz. de quâlibet nove carcata viginti dollis vini et amplius unum dolium ante malum et aliud dolium retrò malum, eligenda ad opus regis per camerarium vinorum suorum, pro 208. solvendis pro dolio illi qui vina illa adduxit; idemque dominus rev, et omnes progenitores sui quondam reges Anglie, prisam illam perceperunt et babuerunt à tempore quo non extat memoria, absque eo quod aliquis alius prisam illans in regno pradicto percipere debet seu consuevit. The king's butler, being opposed thereupon why he answered no prisage for the port of Hartlepoole, answered, that he was hindered by the bishop of Durham. Thereupon the bishop came in by process, and claimed the prisage in that port to belong to him in right of his bishoprick, viz. quad ipfa et omnes pradecessores sui, à tempore quo non extat memoria, bujusmodi prisas babuerunt ibidem prætextu libertatum ecclesia Dunelm, prædicta ; and demands judgment whether he shall be put to answer without a quo warrante. The case depending upon feveral adjournments, the bishop dies .- By this record two customas, wire, de quelifet dope wint in newe infra present over is bagga egnith

1. That in the time of E. 3. there were payable two ton of twenty, not two of thirty, as is surmised in the petition of the first and second of Henry 4. above-mentioned.

2. That as the bishop of Durham claimed prisage in the port of Hartlepoole in right of the county-palatine by prescription, so de facto he enjoyed it.

And thus much shall suffice concerning prisage.

C A P. IV.

Concerning the customary duties, that are or were anciently due in ports by usage or custom.

THERE were anciently very many duties due in ports which were usually called confueradines and customs, which belong to the king either as incident to his customs or as perquisites to his ports, as also to other tords and owners of ports either by prescription or charter.

S 2

Customs incident to the customs.—Such were the custom of the cocquet, whereof before, viz. two-pence of every merchant exporting wools. And thereby it seems to be questionable in the resolution of the case of Waterford, whether the grant of customs eivitatis vocat. the cocquet should carry the great customs. And the stile of the accompt was de exitibus cocketti. But that which may be said for it is, that under that grant they had long enjoyed the great customs, which expounds the charter to extend to it by that name.—The custom of tronage, viz. 2d. ob. for every sack of wool, whereof before.

Customs by prescription belonging to ports, were various according as the usage and custom was.

Some were in respect of ships or vessels themselves, that came into the port; as anchorage and culage or keelage, which were certain sums taken for the ships, in some places more in some places less. Vid. P. 40. E. 3. Rot. 73. The earl of Surry, as lord of the town and port of Poole, claimed by prescription quassame custumas, viz. pro anchoragio et culagio de qualibet nave in portu pradicia applicante duos denarios, et diversas alias custumas, &c. and brought his action for disturbance.

Again, some were in respect of goods imported into the port. Thus, in the former record, the same earl claimed by prescription diversas alias custumas, viz. de quolibet dolio vini in nave infrà portum pradistum applicante, dues denaries, de qualibet centena averii penderis dues denaries, de quolibet mille alecis rubea unum denarium; and brings his action against them that disturbed his minister in collecting them. Such were those prises or customs belonging to the king in his port of Newcastle, which are before recited out of the record of 20. E. 1. and such were those petty customs of goods imported, which were anciently answered to the king in the port of Exeter; and they hold them as parcel of their farm unto this day, viz. de quibus infrà. Such are those prises that are taken by the town of Hull under the title of their fee-farm, whereof vide stat. 27. H. 8. cap. 3. 33. H. 8. cap. 33.

Some were in respect of their measuring of commodities imported, which were measureable by the bushel, commonly called bushelage, claimed as before by the bishop of York in the water of Hull, M. 44. E. 3. B. R. ubi suprà, and enjoyed by the king in the port of Plymouth, as belonging to the castle of Trematon.

These, and such like customary duties as these, were anciently answered to the king and other lords of ports; and they came under the name of consuctudines, and would pass by the general grant of omnes consuctudines, on talueta

tolneta portus de D. and a charter of exemption of toll-passage et omni consuetudine tàm per terram quam per aquam would have given an exemption from them; for they were little else but tolls, and much of the same nature; and accordingly these words in the ancient charters, mentioned in Davis's Rep. 16, et alibi, and especially in old charters, had relation to these customary duties.

But these are not properly customs. The difference stood principally in these things:

1. These were settled by prescription and usage in several ports; and therefore varied according as the several customs of several places obtained. But customs were regular and certain in all places; I mean such as were truly such.

2. These belonged to the lords of several ports, whether it were the king or a common person, as we see in the instances before given. But customs belonged to the king, and to the king only, as the revenue and support of his crown.

3. These would be discharged by the charter of the king to the owner of the port by a grant to be quit de theolonio passagio pondagio et omni consuetudine per totam terram, &c. But such a grant would not discharge from payment of custom, as is resolved in the case of customs, Davis 16. Yet these customary tolls or duties came anciently under the name, not only of consuetudines, but customs, as appears before in this section: and, as is before observed, these ancient exemptions ab omni consuetudine tam per terram quam per aquam, which were frequently granted, were intended to be applied to these customary payments.

The fullest account of this kind of customs is in an old book before mentioned, called *Consultations et Usus Sandwici*. It was begun to be written in the year 1301, anno 29. E. 1. by Adam Champneys; but it is continued down by several authors and hands unto the middle of Edward 3. and after

By that book it appears, that in the year of Christ 1023, king Knute gave to the monastery of Christ-Church Cantuar. ad victum monachorum, portum de Sandwich, et omnes exitus ejusdem aquæ ab utraque ripa sluminis, cujuscunque sit terra, à Pipernesse usque Martell Fleet, ita ut natante nave in slumine, sum plenum suerit mare, [quam] longius de nave securis parvula, quam Anglici vocant Taperax, [potest] super terram [projici], prout ministri Christi, rectitudines accipiant. Nullusque homo omninò habeat aliquam consuetudinem in eodem portu, exceptis monachis ecclesse Christi. Eorum autem est navicula, et transfretatio portus, et theolonium omnium navium, cujuscunque sit, undecunque veniant. Si quid autem in magno mari

mari extrà portum, quantum mare plus se retraberet, et adduc staturam unius bominis tenentis lignum, quod Anglici nominant Spreete, et tendentis autem se, quantum potest, monachorum est. Quicquid etiam ex bâc parte medietatis maris inventum et delatum ad Sandwich suerit, sive sit vestimentum, sive rete arma serrum aut argentum, medietatis monachorum erit, altera pars remanebit mercatoribus *.

Under this charter the monks of Christ-Church held the port of Sandwich until 21. E. 1. and then the king took it in by way of exchange. Pat. 21. E. 1.

The king therefore, having the port under the grant of the prior of Christ-Church, and his successors after him, had not only the great customs of wools woolfells and leather, and his petty customs by virtue of carta mercatoria (for these he had in right of his crown, whose-ever the port is; and these were collected and answered by his customers); but besides these the king, as lord of the port of Sandwich, held such customs or consuctudines as the prior had before as lord of the port.

The difference between these customs or consuetudines therefore were these:

- 1. The true and proper customs were such, as the king had in right of his crown. But these consustudines were such, as the prior had before the exchange in right of his port, and the king had afterwards as lord of the port.
- 2. The true and proper customs were by act of parliament, as the great customs; or by contract, as the petty customs. But these were settled by prescription, first in the prior under the charter of king Knute, and after in the king by exchange with the prior.
- 3. The true and proper customs were collected and answered by the customer. But these consuctudines were answered by the bailiff of the town, first to the prior in his time, and after to the king.
- 4. The true customs were of greater value than these; for we shall find, that wools, woolfells, and leather, which answered the great custom of 6s. 8d. and 13s. 4d. answered a smaller customary payment.

These things will more evidently manifest themselves by the account itself of these customs, as it is entered, and accordingly it was answered

In the Decem Scriptores there is a piece intitled, "Evidentia Ecclefia Christi Cant." which contains a collection of charters to Christ Church, Canterbury, from 1616 to the reign of Hen. I. and in this collection the charter of king Knute here extracted from by lord Hale is included; but the two copies differ very much. See Dec. Scriptor. Coll. 2225. In Lord Hale's transcript of the charter, there seems to be some omission, to supply which the words between crotchets are here added from the transcript in the Decem Scriptores. — EDITOR.

b

by the bailiffs of Sandwich, 12. H. 4. Rot. 200. The title is thus in the book, fo. 40.

Et oportet, quòd sciatur de biis, que ballivicus facere debet de jure ex officio suo, ut dicitur posteà, si ipsi colligere debet per se vel servientem suum aut per custumarium ad boc assignatum custumam domini regis in bunc modum lingua Gallica scriptum.

Some of the many particulars follow, for some of them are so obscure I cannot understand them.

ga pi a falleteni				£.	s.	d.
De chescun tonnell de vin de Gi	ens -		-	0	0	8
De chescun tonnell de vin de is.	iens -			. 0	0	4
De chescun tonnell daysel	der presch	tekal tana		0	0	4
De chescun tonnell de Bresse	, an de by	n 1 74,200	100E (0.01	0	0	4
And fo for divers other th	ings mea	fured by to	ns.			an visi
De chescun cable -	Non un a	s in the state	-10	. 0	0	3
De chescun uptegb -			0 7. 2.5	0	0	1
De chescun sthete -	可引力的	298.5 A CASE	of and all	•	0	1
De chescun notherope	· Liller of	Loss nin	ant celven	0	0	0 06
De chefcun menn cord	Le ct ga	FUNCTION ELLOR	6 particular	0	0	0 06
De chescun neife achate	H. A.	Significant and an	61,0,53	0	2	0.
De chescun battel vendu	- no balla		a throughfur	0	0	2
De chescun ray a harringe	•			0	0	1
De chescun ray a makerell		•		0	0	0 06
De chescun poys de sit	in his	The second			0	2
De chescun poys de furmage, &	ic.		自由人社会	0	0	1
De chescun cent de sturgeon			444	0	0	4.
De chescun cent de samon	1,2 N / ST			0	0	4
And fo for fish.						
De chescun daloum	ac thin s				0	2
And fo for spices of all for	rts.					
De chefeun bale de drape by	10 - G T				0	4
De chefcun drape de leyn bors d	le bayl		_	0	0	1
De chescun sac de leyn				0	0	2
De chescun drap de ling tiel	43 144	rist of	4	0	0	0 06
De chescun cent onnes de canna	ts and	and your		0	0	4
And fo for fruits, dyeing	ftuff, &c	. at feveral	rates.	i is		their
De chescun last de quires				0	0	4
De chescun dere de quires				0	0	2
De cent peaux de berbys	•	· . : //		0	0	4
And fo for various kinds	of leather	and furr at	various r	ates.		1

of the wife is the sace the sace in the sace in the	ſ.	s.	a.
De chescun neif à custumer qt. ele viont doutre le mere	0	0	d. 2
De neife que va per le costere de Angltere en chescun quarter } de lan	0	0	2
De chescun home que passe le mere	0	0	2
De chescun bome ove chival pur se et son chival	0	0	2
De chescun chival sans bome -	0	0	2
De chescun chien veigaant ou alant	0	0	4
De chescun beef		0	
De chescun porc		0	
De chescun agne		11177	8

These be some of those many payments that are there declared to be the bailiff's account; and accordingly I find this note at the foot of the particulars in an old hand:

Nota in comput. Johannis Rogeri et Ballivorum Sandwic. anno 12°. regis H. 4. Rot. 250. Compolus Ricardus de prædictis custumis.

Somewhat of the like nature I have feen in an ancient manuscript book of the customs of London, written about the time of king E. 3. which mentions feveral kinds of customs or tolls belonging to the city under several titles, viz. Custumas de Smithfield, Custuma vici portus de Namby; and under this latter title. after many particular customs of vessels laden with herring, mullet, makerell, congre, are these customs, viz.

the second of th	Line L.	5.	d.
De chescun neif que set à tra dura de strandage		0	
Et un petit neif de barlocks que seit atra durra		0	
Et battell que set à terra durra -			0 00
De 2 quarters de blée mesmes per le quarter le roy			0 qª.
De un commble de blée que vent per le lag			1
De chescun quartre de weyde issant hors de citty per le 1	그들어 없이 가지만 나를 때문에 가지 않아 있다.		1 0b
De 2 quartres de carbone de memesures per quarter le r		5	0 qa.
De chestun tonnel de cervoys issant ou mere per merchan	its stranger o	0	4
Si null estrange mesne bors de là citty mulnel per Ew dur		3.34	2
Merchant estrange mesne leyne outre le mere payer per tient 2 peises 6d. et pur cockett 2. Et s'il saaks de 2 peises, il payer pur le primer sak 6d. pur autres 5d. Et si merchant eit plesours saaks que ten et demy, ou 3 ou 4 pyses, il durra de primer saak 1 1 d. et des autres 10d. et touts jours pur aver le coket durra	un saak que n'a pluseurs chescun des ient 2 peises pur chescun		
등 마스트 경우 (1985년) 등 등 등 1987년 (1985년) 1일 (1985년) 1일 (1985년 1987년 1987년 1987년 (1986년 1987년 1987년 1987년 1987년 19	775		C:

leaver to bomista your dunty arranged to	And the strict of L	£.	s.	d. :
Si merchant meyne outre le mere bure ou o	ent, durra pur le prim	er		
peys id. ob. et de outre peyses ob.				
Et pur chescun peys de furmage issant outre	mere	. 0	0	4
De chescun last de quires issant outre mere et	de chescun daire de qui	re		
2d. et de quire noumper -			0	000
De chescun trussel de quire en cares			0	
De chescun c. de penax lanus	and to which he		0	
De chefeun truffel ly eu cordes de quel merci	bandise quel soit petit		ni	
	ensiebus alletation	0	0	4
De barpois de fishpond	and a line things	0		I q4.
De chescun trussel de draps issent ouer grand	ou petit		0	MARKET STATE
De chescun tonel de vyn que custom deit	A Formattion and		0	
De chescun grant neif qe. set a tra	• icustas s		0.	2
De chescun tonel de meel qe. custom deit	• // /	0	1	0
De chescun cave de pluma issant outre mere	per bome estrange	0	0	4
De un li de leyn a foren ob. de 2. peaux launi		b.		
de un lib. de filas leyn ob. de un cisors ob.	10 I I 7 C C C T T T T L T C C C C C C C C C C C			on F
peaux ou file a la value de 10d. ou plus p	air ob. q.	stark !	10v	
Les merchandises qe. sont peyses per le balan	nce, de 100 durra ob.	et	33.5	
nient pluis jesque à miller, et tunc durra				1 15 1
ob. et nient pluis jesque à 2000, et dunqu	e durra 2d. et avan	t.	197	
And these feem to be in the nature of		Service Control	L .:	- 1-

And these seem to be in the nature of tolls. But the citizens, being by charter quit from tolls, pay not these duties; and the word stranger is not intended only of aliens, but foreigners, or such as are not freemen of the city.

By this it appears, that in some things these ancient tolls and customs, in London, Sandwich, and other ports, agree, and in some things they differ, as will appear by comparing the sums. But yet length of time hath made great alteration in these tolls. The tolls by water, in London, have been usually demised to their water-bailiff in farm. And very late, in the exchequer, the water-bailiff brought an action against a foreigner for the toll of wines brought into the port of London; and upon the trial produced many old records to prove this custom due, viz. 12d. per tunn. But inasmuch as he could produce no proof of any such custom paid; but, on the contrary, great evidence was given by the merchants, that the toll or custom was never demanded, which yet would have risen to a very great sum in the year, viz. 2000l. per annum, at length the plaintiff was nonsuited.

Vot. I. Taliala and and the control of the last

I shall only add the petit customes of Exeter, which they claimed as parcel of their fee-farm, by grant made by king E. 3. unto them of the port of Exeter cum membris, and the ferry of Exmouth, and tastage and stallage of the said ferry, as they were decreed unto them by default in a suit between the bailiss and commonalty of Exeter and one Wade, 9 Feb. Hill. 14. Car. 2. as followeth.

Hill. 14. Car. 9. Feb.

Bailiff and commonalty of Exeter against Wade.—Sets forth the city holden in see-farm at 201. per ann. rent by the charter of E. 3.—That the port and haven of Exeter, and ferry of Exmouth, and lastage and stallage of the ferry, are parcell of the farme.—That they are used to take under the name of petty customs of all goods, imported into that port in ships boats and other navigable vessells, these duties following, under the names of petty customes or town customes:

The contract of the second	£. s. d.c
For every 100 weight of fugar	0 0 0 00
For every 100 weight of madder	A CONTRACTOR STATE
For every 100 of deal-boards	war with a land
For every bale of packing canvas	
For every 100 of cable yarn	the total O. O. L.
For every tun of rodd iron	. 0 0 8
For every hogshead of wine-lees	Service O. O. I
For every roo of twyne	- de insol en a bel
For every hoghead of ftrong-waters	a gilotmoi Oico 4. do
For every last of pitch and had to a selection of the	Tennile to death lower
For every 100 of dreffed flax	- Q. O T
For every dozen of stone-cupps	0 0 0
For every piece of tufted Holland	0 0 0 2
For every 100 weight of latten-wyre	0 0 2
For hogshead of falt	0 0 2
For every piece of lockorum	- 0,00£
For every ream of white paper	rest in the first in the property of the prope
For every hoghead of Rhenish wine	
For every 100 weight of hops.	
For every fatt of wooden were	
	my sy foldy dolaren
Disaffed to be saind as him and in defends after	- J. Gr. 11 - J

Directed to be tried at law, and in default of the defendant's proceeding.

And by this it appears, that although these were called customes, and possibly they were all that were anciently answered as customes, yet they were quite of another nature than those which are now, or in the time of E. 1. were truly so called. And they became a customary duty by prescription and usage in nature of a toll, and connected in point of property by usage and prescription to the lord of the port. And the king, together with the port of Sandwich, had doubtless these customes or tolls as incident or belonging unto it. And they were quite of a different nature from those which were really customes; for we well know the custome of wooll by denizons was 6s, 8d, but here was answered only 2d. The custom of three hundred woolfells was also 6s, 8d, but here was answered only 4d, for one hundred. The custom of a sack of wooll was 13s, 4d, but here was answered only 3s, 4d. And at the same time both customes were answered by the customers and collectors; and yet this customary custom was answered by the bailiffs.

Indeed it may be possible, that in the infancy, as it were, of customs, and before they were reduced to so considerable advance as afterwards happened, viz. in the times, possibly, of H. 1. king Stephen and H. 2. these were the only customes that were paid; and having so continued for a long time, they might grow into a fixed and customary duty: and though possibly. afterwards, some other customs or advances thereof might be introduced that were of great value, the other might be retained. As we see hath happened in former times, though there were new subfidies granted, yet the old poundage fettled by carta mercatoria might and did continue: and so it might happen, that possibly these kinds of port duties were, in ancient time, all the customes that were answered, and that by new provisions there might other more confiderable customes arise, and yet the old be retained under the name of tolls, or it may be under the name of customs; and being grown inconfiderable in length of time might be granted to the feveral corporations of those ports or towns wherein they were taken as part of their farms: as was done in the cases of Exeter and Yarmouth, Kingston upon Hull, and some other ports, which enjoy such like customary payments as part of their farms, fometimes by the name of tolls, fometimes by the name of petty customes, and the like; the crown being in no condition easily to spare such little inconfiderable things, when customs of a greater value were either taken by or feetled upon it, as it happened in the time of king John, H. 3. E. r. and other forceeding kings.

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C A P. V.

Concerning the king's customes, and how they stood before the time of king Edward 1.

I COME now to that which Lprincipally intended, viz. a legall history of the king's customes, properly so called; and therein I shall proceed according to the series and order of time and the kings reigns.

After the beginning of the reign of king Edward 1. the customs were well settled in a regular way; and the monuments thereof, both in respect of their original and progress, are extant of record, and are capable of a fair deduction downward. But before the beginning of the reign of king Edward 1. the times were tumultuous and unsettled, and the records relating to those customs are either not to be found, or otherwise they are very brief, dark, and uncertain.

Yet I shall endeavour in this chapter to collect and put together what memorials I can find concerning the customes before the time of king. Edward 1. and what may be collected from them touching the same; and the enquiries shall be these:

I. Whether there were any customs settled in the crown besides that of prisage before the time of king Edward 1.

And,

II. If any, what they were.

I. Touching the former of these enquiries, viz. whether there were any customs due to the crown before the time of king Edward 1. it seems with some clearness, that there were; but not in that great proportion, nor in that regular way of collection, that they were afterwards.

And here the question is not intended of such customary prestations as were answered to the lords of the ports by usage or prescription, whereof in the former chapter. For without question such payments were very long due, though they might possibly vary in several ports, as is before observed, and they were frequently called customes and consuetudines. But these were petty small matters; and of this kind these seem to be Placita 11. H. 3. in Arce Lond. Rot. 5. and Pat. 34. E. 1. m. 37. dorso, where the customes of ships and other things in Lodagland belonging to the town of Yarmouth are recited; and Placita de juratis, 47. H. 3. Rot. 38. darso, the customes in the port of Seasord in Sussex, then belonging to the earl Warren. Vide Pat. 33. E. 1. p. 1. m. 8. for the customs in the cinque ports.

But besides these, it appears plainly there were other duties of greater moment answered to the crown; and it is said in the black book of the Admiralty, so. 16. that they were reduced by king John to a certain rate. The words of the book are, que roy John soft un ordinance, que un manner de custume soit prise per tout le realm de Anglitere en ewe. And hence it is, that in all the ancient safe-conducts, that were granted to foreign merchants, this clause is inserted, faciendo edbitas antiquas et restas consuetudines; as to those of Gaunt Cart. 43. H. 3. m. 2. of Rodenburgh Pat. 46. H. 3. p. 2. m. 2. to the Spanish merchants Pat. 47. H. 3. p. 1. m. 11. and Claus. 48. H. 3. m. 3. to those of Brunswick Pat. 51. H. 3. m. 31. of Hamborough ibidem, m. 36. of Ipres Pat. 57. H. 3. m. 15. dors. of Britain Pat. 54. H. 3. m. 14. of Lovain Pat. 55. H. 3. m. 15. of Orleans Claus. 2. E. 1. m. 7. dors. of Sienna Pat. 3. E. 1. m. 21. all which were before the settlement of the great customes, as shall be shewn.

And to this purpose may be produced the account of Cheshire in Doomsday. Vide Selden Titles of Hon. 620. Cart. I. Johannis p. 2. m. 26. dorfo. concerning the free trade of merchants-strangers; Rot. oblat. 2. Johannis m. 4. concerning the customs of Bristoll; and Pat. 6. Johannis m. 11. ordinances concerning the French merchants; whereby it appears, that during the wars with France all merchandizes, except corn wine and falt, exported into France or imported from thence, paid the fifteenth part of their value during the war. But it feems, by these ordinances, the generall custom of merchandizes, as well woolls as others, was the twentieth part of their value. Pat. 17. Jobannis m. 16. touching the merchants of France. and the discharge of mala torta. And Rot. Pat. 50. E. 3. m. 22. n. 60. the king granted to prince Edward certain customs, viz. rationabilis aliqua portio of the merchandizes. And in fir John Davis's Reports, 16. mention is made of a pipe-roll of the time of H. 2. Vicecomes Norf. et Suff. reddit compot. 45l. 16s. 6d. de consuetudine navium de Orford. And in the piperoll of 5. R. I. Albertus de Billing fg ate debet 725. consuetudine de Billing fg ate et Buttolfsgate, though this latter feems to be only a toll, not a custom. Vide Dyer. 65. And the stat. of Magna Carta, cap. 30. grants, that merchants shall come: into England fine aliquibus malis tolnetis per antiquas et rectas confuetudines.

And besides these fixed and settled customs, it is apparent, that there were temporary impositions, or rather subsidies, answered to the crown. Pat. 50. H. 3. m. 22. n. 60. the customs granted to the prince; et m. 28. Pat. 57. H. 3. m. 1. Pat. 51. H. 3. m. 37. Pat. 54. H. 3. m. 10. Pat. 3. E. 1. m. 29.

So that as to the first point certain it is, that besides the pert duties incident by prescription to the several ports, whether in the hands of the king or of a subject, there were customes answered to the crown; and those customs did not come under the name of toll, nor a charter to be quit of toll did not exempt or discharge them; for they were clearly of another nature. 39. E. 3. 13. the case of the men of Marlborough and Southampton.

But though it be very plain, that there were customes, and those also of a confiderable value, yet what they were is difficult to determine; and the rather, because we have no customers accounts that can be found in the pipe before the time of E. I. Yet we must try what we can guess.

. II. Therefore as to the second inquiry, what was enswered, and for what

goods.

(1.) Touching goods imported there was some custom answered; and

principally of these two kinds.

First for wines imported, besides the duty of prisage, there was answered to the crown, both in king John's time and after, a confiderable duty, viz. eight-pence upon every ton, which in the fingle port of Southampton was then farmed at 2001. per annum: which in the very intrinsical value of the money, allowing twentypence to an ounce, would at this day amount to 600l. per annum. This appears by the book of 39. E. 3. 13. And there it is admitted, that this is enflow and not toll, neither is it discharged by the acquittal of toll. And some such custom it was, that Pat. 38. H. 3. m. 2. is released to the merchants of Bourdeaux by the name of exactio et prisa tonellorum, except a kind of tonnage of wine then in use, with this clause also, tamen renfuetudines denorierum, fingulis doliis in diverfis portubus impofita, à metcasoribus perfolvantur codem modo et eadem forma, qua secundum diversitatem persuum fotoi extitit confuetum. Vide in the case of Poole before, the earl of Warnen had 2d. for every ton that came into that port, and possibly it might be a part of that 8d. which the king had. And thus much for wines.

So it might possibly and very probably be, that some custom was answered the king in nature of poundage for goods of averdupoise. We see it was so answered to the earl Warren in Poole, viz. de qualibes cemenaria ponderis dues denaries. And it seems that some such custom or imposition was answered to the king in the times of H. 3. and the beginning of E. 1. of other merchandizes imported as well by denizens as strangers. Pat. 50. H. 3. m. 22. the king grants to the prince, that merchants-strangers may come into the kingdom with the licence of the prince,

prince, and upon these conditions; quod de emnibus mercandists, per ipsos tel quescanque elies, in regram nostrum venientibus vel regno nostro exeuntibus, eliquem totionabilem persionem persionem persionet, nude mercatores super medium non graventur. And Pat. 3. E. 1. m. 29. a deputation bearing teste 27 Martii issued to the merchants of Lake ad quandam consuetudinem, per totum regum Anglia, de rabus et mercimoniis instra idem regnum venientibus, usque Ostobr. Pastha proxim sutur, capiend sicut priùs sieri consuovit. So that a custom inwards was answered till that time; and possibly it might be discharged upon the grant of the great custome of woolls and leather in that year; for I sind not any thing answered by subjects or aliens sommerchandizes imported between the 3. E. 1. and 21. E. 1. when the carta mercatoria was granted, besides prisage.

And thus much touching customs of goods imported.

(2.) Touching the custom of goods exported, and therein principally of woolls.

It is certain, that in the ancienter times, especially in H. 2. and R. 1. time, there was a great trade and manufacture of cloth here in England, and the great mart for the vent of English cloth was the fair of St. Butalfe or Boston; and this appears,

1. By the History of Hoveden, who mentions the great disturbance that happened among the merchants of that fair, because of the strict measure of cloth that was then put in use in tempore Ricardi primi.

2. By the statute of Mogna Carta, cap. 25, concerning the measure of cloth of russet and other.

3. By those many guilds of weavers in many of the great inland towns at very considerable rents, which after, as the manufacture decayed by the civil wars, got allowance and defalcation of their farms, as in London, Lincoln, Oxford, and divers other places. And some little footstep there is of that trade by the Tinctors of Rippon by custom, that none may dye cloaths there but those of their fraternity. Register. And accordingly the guild of Telarii, London, by virtue of their ancient charter from H. 2. which I have seen, and the usage thereupon, have power to restrain any that weave, not being of their guild. And therefore it might possibly happen, that in those times the custom might not be answered for woodls but for clothes; because it seems the great commodity of woodls might in those times have been made into cloth.

But in the times of the distempers and civil wars in England in the times of king John and H. 3. that manufacture was in great measure lost, and the woolls were transported into foreign parts, and there turned into cloth. So that if in these times there should have been no custom answered for

woolls, which was the greatest commodity of this kingdom, there was nothing that could have answered the king a considerable custom outwards; and therefore it seems probable, that there was a custom outward answered for woolls exported.

And indeed it is apparent it was so, though I have not met with the certain proportion that was so answered; for the statute of 51. H. 3. called Statutum de Scaccario doth expressly mention it, and provide how the collectors thereof shall account, viz. et les principalls cuillers des customes de laines payont, à les deux termes avantdits, touts les deniers qu'ils ont receive et prises de l'avant dit custome, et de an en an rendent accompts apertement de touts les parcells receives per touts les ports et par tout le terre, issint qu'il respoigne de chescun neise, au ele sera charge, et combien ele portera de la leine, et d'autre charge en le neise de que custume est due, et de tout le resceit.

By which it is apparent, that there were customs of wools, though it appears not what was the proportion that was answered; neither can I discover it, though I have made a strict search after customers accounts in the times of H. 3. and in elder times.

The remedy for the customes at the common law seems to be only a distress of the goods of the merchant. Vide accordingly done 39. E. 3. 13. in the case of Southampton. But for oblata the 3. Johannis m. 4. a mandate issued to the constable of the castle of Bristoll to seize the ship and goods of a merchant that had concealed his custome, and thereby to levy double the value of the customes, and double the damage that the king had sustained for want of them. But this was an extraordinary and arbitrary remedy. The proper remedy for the duty itself was in the exchequer; for there was no law then for a forseiture of the goods, that I have seen.

And thus much shall serve for an essay touching the customes in that dark time that was before king Edward 1. Only thus much is to be added, that all or the most part of the various customes so antiently used vanished, as to subjects born by the great custome of wooll and leather settled 3. E. 1. and as to aliens by the great contract or carta mercatoria, 31. E. 1. and were not afterwards answered.

So that is their since there should have

^{*} Mr. Madox, in his History of the Exchequer, gives a chapter on the revenue of the customs, during the same early period as is here undertaken by lord. Hale; which I remind the reader of for the sake of connecting all the materials hitherto published on this dark part of the subject. Mad. Excheq. c. 18.—EDITOR.

C A P. VI.

The narrative of the customs, and their several originals and alterations, as they stood in the time of king Edward 1.

I COME to times of some more light, viz. the reign of king Edward 1. who was as wise a prince as ever ruled this kingdom; for he builded up this kingdom by good laws and wise government, out of the ruins and desolations which a long civil war had introduced; and the first thing he began with was to settle trade and a certain revenue to the crown by a more regular and settled rule and establishment of the customs.

The foreigners and aliens had indeed gotten all the trade of the woolls of England into their own hands, and thereby ingroffed it wholly into their own power.

The king observing this, and withall having a design to settle the customes as well as to rectify this disorder in trade, in the very entrance into his reign issued a proclamation, that no woolls should be exported out of the kingdom. Touching the legality of this inhibition, if made without consent of parliament, I dispute not here. But howsoever it at present served the purpose designed by it.

Pat. 2. E. 1. m. 19. dorfo, a strict commission issues to enquire what woolls were exported against that inhibition, and by whom, and whether done after notice of this inhibition.

There being this restraint upon the exportation of woolls, it was now seasonable to set on foot a settlement of the customes intended principally to be charged upon that commodity.

1. Because the country and the merchants, being under this restraint, would in all probability be more yielding to the inhauncing of the customes upon these commodities, that thereby the restraint might be removed, and the ports open to the exportation.

2. Because by this means there would be in all probability a large proportion ready to be transported, as soon as the ports should be open; and thereby the intended customes would be the greater, at least upon the first opening of a liberty of exportation.

Shortly after, viz. in the parliament of 3. E. 1. which was that parliament which is called Westminster the first, held crastine post clausam Pascha anno 3. E. 1. as appears by the preface of that statute made for the settling Vol. I.

of the great custome of woolls woollfells and leather, upon the crown, and then and for almost thirty years after it was called Nova Custuma.

This act is entered inter fines 3. E. 1. m. 24. Pat. 3. E. 1. m. 1. and Originalia de anno 3. E. 1. in the exchequer, and in the red book of the exchequer fo. 356. which, because it is the basis and foundation of that great custome, and doth explain very many difficulties and rectify many mistakes concerning the great customes, I have thought sit to insert verbatim as it is in the record, viz.

De Nova Custuma Lanarum Pellium et Coriorum in Originali anno 3 . regis F. R. H.

A la novele custume, ke est graunte par tous les graunz del realme, par la priere des comunes des marchaunts de tout Engletere, est purveu, ke en chescun conte, ou la grem'ore vile ou port est, soient essut deans de plus leaus e plus pussaunz, ke averont une pece de un seil en garde, en un, ke sera affigne par le roi. avera un autre pece, e seront jurez, ke leaument rescevront et responderont des deniers le roi, cest afavoir de chescun sak de laine demi mark, e de chescun treis cent peauls ke funt un sak demi mark, e de chescun last de guyre un mark, ke isceront bors del realm, ausi bien en Hyrlaund en Wales come en Engletere, de denz fraunchise e de bors. Estre ceo en chescun port, ou ness pount ishr, seront deus prodes bommes jurez, k'il ne sufferount aissir laynes peaus ne quyrs sanz leattre overte a la seel, ke sera au chef port en le counte. Et s'il est mil ke autrement sen isse bors del realme, aufi bien il perdra tout les chateus k'il a, e sun cors sera a la volunte le roi. Et pur ceo ke ceste chose ne pouv tost estre per furing, est purveu. ke le roi enveie ses lettres a chescun vesconte per tout le realme, e fait crier et defendre par touz les contes, ke nul, sor forfeture de son cors e de touz ses chateus, ne face mener bors de la terre laynes peaus ne quyres avaunt la feste de la Trinite en cest an, et adunkes par lettres overtes od le seaus si com est andudroe ensime autrement sir les avantdites forfetures. Et le roi ad graunte de sa grace, ke touz les seigniorages, par quy porz laynes ou quyres isteront, averont les sorfetures. quant eles deviendront, chescun en sun port, sauve a roi demi mark de chescun fak de layne e des peaus, e un mark de chefcun last de quyres . And accordingly perbatim Finis 3. E. 1. m. 24.

On account of the great curiofity and importance of the preceding extract from the Originalia of 3. E. I. I compared the transcript here given with the record itself, now in the curiody of the Treasurer's Remembrancer of the Exchequer, and made it as exactly conformable to the driginal, exclusive of the punctuation, which is not in that, and of the abbreviations, as was possible. Mr. Chapman, the deputy-remembrancer, most chligingly assisted me on the occasion. The extract is from the Originalia of 3. E. I. m. 15. which in the margin is marked No. 12. 13.—The extract from the record begins with the words A la novele-custume.—Editor.

And according to the purport of this inhibition of exportation within the time limited by this act, divers merchants-strangers were sett at great fines for exporting of woolls contrary to that inhibition. Their fines were sett in the king's-bench, and answered in the accounts of the collectors 4. E. 3.

Upon this record many things are observable, which give a greater light to the whole business of the great customes; and hereby the original of many things concerning the same are discovered, which without this would be obscure and dark.

1. By this record it appears, that these great customes are not by prescription, as is said in Dy. 165. but it had its original in the time of king Edward 1. and it was then called Nova Custuma, and continued that stile until the 22. E. 1. when a new inhaunced custome of woolls was sett, called Nova Custuma, as shall be shewn; and then and not till then the custome of woolls, woollsells, and leather, took the name of Ansiqua Custuma. And this appears by very many records, viz. in Pat. 14. E. 1. m. 19. it is called Nova Custuma, and all the collectors accounts from the 4. E. 1. until the 28. E. 1, of these great customes are stiled Computus, &c. de Nova Custuma.

Indeed about 22. E. 1. the king had fett a new imposition upon woolls of 40s. a-sack; and then the former was called Antiqua Custuma. And this maltolt was called Nova Custuma; and shortly after, when that maltolt was abrogated by parliament, there came in the Carta Mercatoria of 31. E. 1. whereby the small customes were settled in the crown, which were sometimes Nova Custuma. So that the great customes of woolls woollfells and leather settled 3. E. 1. kept their title of Nova Custuma till the great imposition of 40s. per sack in 22. E. 1. and then that took the name of Nova Custuma, and the former lost its name of Nova Custuma, and became Antiqua Custuma: and when that imposition was taken away, yet the customes of 3. E. 1. did not resume their name of Nova Custuma; neither well could they, for there presently succeeded the Carta Mercatoria in the 31. E. 1. which settled a new course of customes upon strangers, and was frequently called Nova Custuma.

2. The fecond thing observable is, that as this custom began in 3. E. 1. so it began not by imposition of the king, nor by composition with the merchant, but by act of parliament. This transcript in the fine roll and the red book of the exchequer, if it be not the very tenor of the act, yet it is the very substance and matter of it. There are no parliament-rolls of that parliament, nor for many after; but the very same thing

in totidem verbis is entered inter Originalia de anno 3. E. 1. and Rot. Finium 3. E. 1. m. 24. And accordingly Rot. Parl. 3. E. 1. m. 1. and likewise Brevia 16. E. 1. cited by Sir Edward Cooke in his comment upon Cap. 30. of Magna Carta*, and also Claus. 26. E. 1. m. 8. do all recite the original of this great custom to be by act of parliament, viz. Cum prelati magnates et tota communitas quandam novam consuetudinem nebis et bæredibus nostris concessit de lanis pellibus et coriis, viz. de sacco lanæ dimid. marc. de trescentis pellibus dimid. marc. de lasto corii 13s. 4d. And therefore it is a mistake in those that have thought this custom to be by the common law †; for most certainly it began in the time of king Edward 1. and began in that time by the strength of an act of parliament. Vide also to the same purpose Pat. 4. E. 1. m. 1. et 19. Pat. 5. E. 1. m. 14. Pat. 6. E. 1. m. 20. Fynes 10. E. 1. m. 5. Claus. 10. E. 1. m. 5. Claus. 11. E. 1. m. 19. Claus. 16. E. 1. m. 9. all which and many more do stile it Nova Custuma.

3. In the first institution of this great custom, we have the institution of the collector and comptroller, viz. the deux prodes bomes, which offices have been hitherto kept with the addition of a searcher, and in the port of London a surveyor: whereas anciently the customs in the ports were received by the king's bailists or port-reves.

How these officers are to be appointed, and for how long, and what their duty is, see the statutes 1. H. 4. 13. 4. H. 4. 20. 13. H. 4. 5. 1. Eliz.

11. and other statutes relating to their office and employment.

4. Together with the institution of the great customs of wool woolfells and leather, we have also the institution of the cocquet, or acquittance testifying the payment of them. This began and continued with those great customes, and did not concern in truth any other; so that by common appellation in many places, and in some records, the great custome was called the custom of the cocquet; and the town of Waterford claimed and enjoyed the great custom by the grant of the custom called the cocquet. Davies Rep. 7, &c. The cocquet was a testimonial in the king's name, under the king's seal deputed for that purpose, testifying the payment of the customs. There were anciently two parts of the seal; one kept by persons thereunto appointed, as appears by this grant; another part by the comptroller. But in process of time the seal was entirely kept by the comptroller, or by the customer and comptroller.

* 2. Inft. 59.-EDITOR.

[†] This opinion is to be found in Dy. 165. b. but Lord Bacon allows it to be a mistake; shough he was an advocate in parliament in favor of the crown's claim to impose duties at the ports by prerogative. See Lord Bacon's speech in vol. xi. of the State Trials, p. 37. However, Sir John Davies, in his book on The Question concerning Impositions, is not so conceding; but argues, that what is called a grant of a new custom by parliament to the king, was only a diminution of the old one by the king in parliament. See p. 44. of that book.—Editor.

It answered the king a casual profit, for which the collector answered upon his account as well as for the customes, viz. of every merchant shipping out these customable goods, two-pence, for which the collector of the customs answered upon his accompts yearly, from 3. E. 1. until the time of H. 6. and after, viz. de exitibus sigilli, quod dicitur cocquet. This testimonial of the payment of customs is the warrant for the searcher to clear the ship and goods; and regularly, when this was once done, the subject was discharged. Vide Rot. Parl. 45. E. 3. n. 3. 46. E. 3. n. 23.

And the want of this was sufficient for the searcher to seize the woolls woollfells and leather exported without this warrant; and the common stile of the seizures of merchandizes of this nature was, quia non cockettets nec custimata.

5. We have the place or port where the customes ought to be paid, and the seale of the cocquette deposited. It was not in every port, but in the chief port of the county; which yet the kings were used to enlarge to ease the merchants of that trouble; and sometimes the cocquette was lodged in two or three ports in a county, where a merchant might pay his customs and have his discharge. But still the designation of the ports was in the king's power, which created a great dependence in the merchant upon the king, as to these customes; for he could not export them without a cocquett, but they were subject to a forseiture; and a cocquett he could not have but where the king had lodged his seal, which gave the king a great opportunity to hold the merchant to hard terms.

6. We have the punishment of exporting the merchandizes without paying of the custom. The merchant forfeited all his goods, and his body was at the king's pleasure, viz. subject to fine and imprisonment. It was not only a forfeiture of the goods uncustomed, but of all his own goods; and this severe punnishment was applied only to these great customes, and not to other customes, for they were under gentler punishments, as shall be shown.

But, besides this punishment, process of time introduced another, which was constantly put in use *, viz. if the master or owner of a ship did lade aboard any wooll woollfell or leather uncustomed, the ship itself was forseited, at least if the master were privy to the sact (but this concerned only those merchandizes of woolls woollfells and leather, and not any other kind of merchandizes); and accordingly this was frequently put in practice. Clause 13. E. 3. m. 15. Clause 38. E. 3. m. 13. pro Johanne Ball. Clause 39. E. 3. m. 20. pro Johanne Henrys. Clause 38. m. 29. pro Johanne Thriusco,

was made to prevent that inconveniency, viz. that whereas the ships of divers people be arrested and holden forfeit, because of a little thing put into their ship not customed, whereof the owners of the same ships be ignorant; it is accorded and affented, that no owner shall lose his ship from the 15th day of February next coming, for such a small thing put in the said ship not customed without his knowledge.

But this severity did only extend to wools woollfells and leather, and not to other sorts of goods uncustomed, and so I remember it was agreed M. 3. Car. in the exchequer; for in other cases only the goods uncustomed were forfeited, and not the ship or other goods, unless otherwise particularly provided by some special act of parliament in particular

cases, which we shall in due time meet with a souly said sand sale s

king, if in his own ports; but if the forfeiture were given, viz. to the king, if in his own ports; but if the forfeiture were in the port of another lord, the forfeiture is given to the lord of the port, faving to the king his custome so concealed.

This was a fair bonorarium given to the lords of ports; but I do not remember that ever I have read in any case that they enjoyed it. In a little time the king's interest and concernment over-ballanced and carried the

forfeiture to the king, together with the duty.

England and Wales, but also to Ireland: and by virtue of this act of the parliament of England, the kingdom of Ireland was charged with those customes; and it is under that right the king held these customs in Ireland, and helds them to this day.

It is true, shortly after this grant the king did remit it for sometime in Ireland, and made an abatement for the same to the merchants of Florence that farmed it. Claus. 7. E. 1. m. 5. But it soon was resumed and hath ever since continued, and continued under this and no other title, for any thing I have yet seen or read. Vide Davys Rep. fo. 8. et sequentibus the exemptions granted to Waterford.

9. We have the things that are charged with this cultom, the two great commodities of the kingdom, wooll woolfells and leather.

For wooll, this was the great native commodity of the kingdom, and indeed the basis of all the commerce of the kingdom.

At the time of the grant of this duty it was free for English or aliens to export woolls to any place; but subsequent laws did fub mode rastrain, and at length wholly restrained the exportation; so that at this day there

can

now stands totally inhibited under great penalties. The progress of that inhibition was this.

By the statute of 11. E. 3. cap. 1. the exportation of wooll, by denizers or strangers, without licence of the king and his council, is forbidden under the pain of death.

By the statute, of 15. E. 3. cap. 6. liberty is given to all merchants to export woolls paying the ancient customs; and to the same purpose is the statute of 18. E. 3. cap. 3.

By the statute of the staple 27. E. 3. cap. 1. et 2. merchants-strangers may buy woolls at the staples and transport them; but by cap. 3. English, Welch, and Irish, are prohibited to transport woolls, under pain of death, and loss of goods and lands. By the statute of 36. E. 3, cap. 11. free liberty of exportation of woolls granted as well to denizens as strangers, paying the ancient customs.

oBy the state of 38. E. 3. cap. 6. the penalty of death upon transportation enacted by 27. E. 3. repealed; but the forseiture of lands and goods to stand in force. By the stat. 43. E. 3. rap. 1. the staple removed from Calais to the former places settled by 27. E. 3. By 12. R. 2. cap. 16. settled at Calais.

By the stat. 1. H. 4. the staple of wooll, woollfells, leather, lead, and tin, is fixed at Calais.

By the stat. 3. H. 5. cap. 6. the staple continued at Calais, customes paid here, and securities given by the merchant to carry staple commodities to Calais. By the stat. H. 5. cap. 2. every merchant stranger buying woolls in England not coming to the staple to be sold, shall for every sack of wooll deliver in to the Mint an ounce of gold.

By the flat. 18. H. 6. cap. 15. carrying of woolls, woollfells, leather, lead, or tyn, by any person other than to the staple of Calais, without licence of the king; felony, unless to the streights of Morocco. What progress it had after, see the flat. 4. H. 4. cap. 14. E. 4. cap. 3.

So that the staple continued at Calais for aught appears untill it was lost in queen Mary's time; and consequently the exportation of staple commodities to any other place under an inhibition; and then Calais being lost to the French, the inhibition stands universal, unless in those places which are particularly excepted,

But to clear all question, by the late act of 12. Car. 2. there is a general inhibition of the exportation of wooll under most severe penalties; so that at this day the old custome as to wooll and woollfells import nothing; because the exportation of them is utterly prohibited at this.

day,

day, and consequently no custom arising thereby. And the case stands the same as to leather; for by the statute 18. Eliz. c. 9. exportation of leather is likewise inhibited. Only by the late act of tonnage and poundage, 12. Car. 2. calf-skins of a certain weight are permitted to be transported.

But by the last rules of the book of rates at this day, during the continuance of the subsidy of tonnage and poundage, all these ancient duties for woolls, woollfells, and leather, and all other ancient duties upon merchandize, other than such as are imposed by that act or excepted, are put in suspense.

Now what woolls were intended within this custom, vide Rot. Parl. 8. H. 6. n. 47. a petition that lambs wooll shorting and scalding be not esteemed chargeable to the great custom of wooll and woollfells; but it obtained not.

to. We have the time when the custom grows due, viz. when laden on board to issue out of the realm. Therefore if they were shipped to be transported to another port within the realm, no custom due. But yet in such case surely ought to be given for the transporting of them to that other port, or otherwise they ought to deposit their customes till they bring certificate of their lading them within the realm. Vide Claus. 7. E. 3. p. 1. m. 24. Stat. Stapul. 27. E. 5. cap. 15. Rot. Parl. 9. H. 5. pars 1. m. 33.

fack of wooll fix shillings and eight pence, for 300 woollfells fix shillings and eight pence, for a last of hides a mark. And herein we are to observe, that though the proportions be here fixed, yet the constant usage hath always been, that the king should be answered his customes pro rata, as for half a fack or half a last or for 150 woollfells.

Now touching the quantities themselves what they are, by the old statute * called "Compositio de ponderibus," last coriorum constat en viginti daker, et quodlibet daker constat ex decem coriis. According to the same statute, saccum lane constat de duabus wagis, waga ponderat quatuordecim petras, et petra constat ex duodecim lib. so that a sack of wooll according to that estimate weighed 392lb. And 300 woollsells were estimated to answer a sack of wooll, and therefore charged with the same custom, viz. 6s. 8d.

^{* 31.} E. 1.—In Mr. Ruffhead's edition of the statutes, this antient writing is intitled Tractatus de Ponderibus et Mensuris. By the context it appears to be rather an explanation of the weights and measures by reference to the statutes of the realm, than a statute of itself.——EDITOR.

But by the statute of 25. E. 3. st. 5. c. 9. the fack, which before weighed 28 stone, is now reduced to 26 stone; and every stone 14 pound; which amounted to 364 pound, viz. less than the old sack by 28 pound.

And possibly the old sack even in those former times was accounted too large; and therefore upon all the old accounts in the times of king E. 1. and king E. 2. there was answered upon every sack of wooll ob. et q². viz. three farthings more than the custom of the demy-marke, in a particular account, viz.

Et respondet de 3lb. viz. de quolibet sacco lana ob. et qa. which I think was not taken when the sack was reduced by the stat. of 25. E. 3. to 26 stone.

A pockett of wooll contained half a fack, and so did a serpler, whereof frequent mention occurs in record. A todd of wooll is two stone, viz. 28 pound.

12. And lastly, we have the sum that was answered, viz. demy-marke for a fack of wooll, demy-marke for 300 woollsells, and a marke for a last of leather. The penny then weighed three-pence now; and consequently a mark then amounts in bullion at this day to forty shillings, which in regard of the rates and valuation of things is now more than thrice what it was then. That, which was then worth forty shillings, is now worth above six, nay above ten pounds. And this seems to be about the twentieth part of the value, as things were then. See Ros. Parl. 17. E. 3. n. 17. the valuation of a sack of wooll in every county. The medium seems to be about ten markes at that time.

And thus I have made a short survey of this great foundation of the great customes, and of the severall considerations that arise from the same; and now I shall proceed in the next chapter with the progress thereof, and what farther occurred relative to the business of the customs in the time of king E. I.

The if we ishe he element the real is the risk of the wheel there is no economically of the whole revenue, and of this summer always distributed for the problem of the whole were interested also were a tability, as the first of the real was a tability of the flower of the real was a tability.

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correction of the printer without guillenger, w. g. p. 131-. Briras.

The farther prosecution of the business of the customes in the time of king Edward 1.

HE king (Edward 1.) having thus fettled the great customes, in the very next year takes care for their collection and improvement; and having borrowed 23000l. for his occasions of the merchants of Lukes. the great customes are committed to them through all England and Wales, and Ireland also, upon account.

They held the great customes of England and Wales from the 4. E. I. inclusively until about the 20. E. r. The fum of the account of the great customes of Ireland for the three first years arose to 51711.

The medium of the revenue of the great custome in England rose to between 8 and goool. per annum; for instance,

TO THE RESERVE OF THE STATE OF			L.	s.	d.
A Festo Dunstani anno septimo ad idem	Festum anno	8. E. I.	8108	13	5
For the next year ending 9. E. 1.	The summer of		8688	19	3.
For the next year ending 10. E. 1.	the site of	aria 💼 in	8694	19	3
For the year ending 11. E. 1.	W deal . A	o and	10271		100
For the year ending 12. E. 1.	lis pyods in	L Z L v M	9098	V1611/195	-
For the year ending 13. E. 1.	S1 187 251	10, 11, 1	8094	13	6
befides some ports omitted in their form	ner accounts,	which i	The state of the s	-72	
these years arose to 4091. 7s. od.	विश्वास अस्त्र प्रदेश	Madein	tipol utal	2010	
For the year ending, 1 4. E. 1.	l di u nit a sh	ana ana	8023	6	10
For the year ending 16. E. 1.	illatovai sa	i 🖃 ottal	8860		
For the year ending 17. E. 1.	oxen odani	f. sport	9974	6	I
But as trade increased, so in all succes	fions of thi	s king a	nd his fuc	ceffe	or's
reign, the revenue of this and other the					
Don if we take an officers though					:-

But if we take an estimate thereof in the time of H. 6. when there is an account given of the whole revenue, and of this among the rest, viz. Rot. Parl. 11. H. 6. n. 24 . when woolls were charged also with a subsidy, as shall be shewn, the great and petit customes did not amount to above 7000l. communibus annis :

			£. s. d.
Viz. Anno 10. H. 6.		-	7780 3 1
Anno 11. H. 6.	•		6980 16 0 &c.

^{*} This curious estimate is in the printed rolls of parliament, v. 4. p. 434.- EDITOR.

Thus

Thus the customes stood untill 22. E. 1. But the king, having occasion for money for the warrs in France for the recovery of Gascoigne, treated with certain merchants, and there was a new imposition upon woolls woollfells and leather, which was called Nova Custuma, viz. de quolibet sacco lana fratia 5 marca, de quolibet sacco alterius lana vel pellium lanatarum tres marca, de quolibet lasto coriorum 20 marca; which afterwards in the same year was reduced to a lower proportion, viz. for every sack of woolls and woollfells of any kind tres marca; and thus it continued for some time, as shall be shewn.

All this appears in the accompt of 28. E. 1. which is thus titled:

Compotus Petri Barton et Johannis Hustwicke Collectorum Novæ Custumæ lanarum pellium et coriorum apud Kingston super Hull. Custumam anno 22. mercatores regni in subsidium guerre, quam rex pro recuperatione Vascoine contra Gallicos intendebat, de lanis et coriis exeuntibus regnum, regi gratanter concesserunt, viz. de quolibet sacco lanæ fractæ quinque marcas, de quolibet sacco alterius lanæ vel pellium lanatarum tres marcas, de quolibet lasto coriorum 10 marcas; quod quidem subsidium rex post modum gratiose mitigavit, videlicet, concessit 15°. die Novemb. eodem anno 22. siniente incipiente 23. quòd omnes mercatores tam regni quàm aliundè, mercatoribus regni Franciæ duntaxat exceptis, lanas suas pelles lanatas et coria et alias mercandizas ad partes traducere possint, ita quòd regi de quolibet lasto tam lanæ fratæ quàm alterius, et etiam pellium lanatarum, tres marcas, de quolibet lasto coriorum ducendorum ad easdem partes quinque marcas persolvant à vicesimo nono Julii 22. E. 1. et usque Festum Sancti Michaelis tunc prox. sequent. et ab eodem Festo usque Festum Natalis Domini anno 25. incipiente pro tempore. Rex amovit prædictum Jobannem, viz.

stabilines in	Buth Told Con	arohr wal	on Lo	excipations, etc. contentions
Auno 23	n co area out	or lancers	6199 7	1 de C 11 1
Anno 24	•	- six	4061 }	In that port of Hull.
Anno 25	end-Entroys	media adibia	544	where were 10

Upon complaint of this imposition, the statute of 25. E. 1. called Confirmationem Cartarum was made; and by that statute cap. 7. it is enacted, E pur ceo que touts le pluis de communalty sentent durement greve de le maltolt des leines, cestavoire de chescun sack de leine quarrants soutz, et nous ont pryes que nous les voudremus releser; nous a leur pryer les avouns pleniment relesse, et nous avouns grant pur nous et pur nos heirs, que cele ne autre mes ne prendrons sans lour comun assent et leur bone volunt, save a nous et a nos heirs la custome de leynes pealx et quires avant grant per le cominalty avantdit. Test. &c. 10 Oct. 25. E. 1.

Upon this act these things are observable:

chants, yet it being without consent of parliament it was not legall, and the king himself stiles it no other than a maltolt. The like instances we

shall after have 21. E. 3.

2. That there was by the act a speciall clause, that the like impositions in the future should not be laid without consent of parliament. And yet these inland commodities were so ready at hand, to be charged upon emergent occasions, that there were sometimes the like illegall maltolts imposed. But upon complaint they were removed, and the like provision made against suture charges of that nature without consent in parliament. 15. E. 3. cap. 1.—Merchants shall have free passage for their woolls and other merchandizes, paying the customes of old time used. 27. E. 3. st. 2. cap. 1. & 2.

3. That the old fubfidy of woolls woollfells and leather, which before this new imposition were at first granted to the king by parliament,

as is before observed, [is saved *.]

The great custome of woolls woollfells and leather, which before this new imposition of 22. E. 1. was called Nova Custuma, now changed its ap-

pellation, and was after this called Magna et Antiqua Custuma.

After this act the old custom, viz. for a fack of wooll demy mare; et pro 300 pellibus lanatis, quæ faciunt unum faccum, demy mare; et de lasto coriorum continente 20 dacres et quolibet dacre continente 10 coria, unam marcam, was answered; and accordingly the account passed for the year ending 24 Nov. 26. E. 1. as appears by the accounts of the collectors of the customes, and that it stood untill 31. E. 1.

31. E. 1. the king granted to merchants-strangers divers liberties and exemptions, as, namely, of prisage, murage, &c. And in confideration thereof the merchants-strangers granted to the king divers new customes, commonly called *Parva Custuma*, viz.

Of every ton of wine imported by them two shillings, commonly called

butlerage, because it came in lieu of prisage.

Of every last of hides by them carried out of the kingdom, over and besides the ancient custome, demy mark; so that the whole custome of an alien for a last of hides was 20s.

Of every fack of wooll by them carried out of the realin forty pence, besides the ancient custome; so that the alien's whole custome of a fack of wooll was 10s.

Of every 300 woollfells the fame custome as upon a fack of wooll.

* The two words between crotchets are added to supply a chasm in the MS.-EDITOR.

Of every cloth of scarlet dyed in graine and carryed out, the sum of 29.

Of every cloth wherein there is part graine intermixed, exported, 1s. 6d.

Of every other cloth without graine, 12d.

Of all other things, viz. averdupoife, filks, horfes, cattle, and other merchandize exported or imported, three-pence for the value of every twenty shillings, within twenty days after their importation and unlading or sale.

Of all merchandizes bought in the kingdom and exported, threepence for the value of every twenty shillings ultra custumas pradictas regiaut aliis ante datas.

Of every quintall of wax, 1s.

The tenor of the charter itself, because it is the foundation of these aliens customes, I have inserted, and is as followeth *:

Cart. 31. E. 1. No. 44.

Pro mercatoribus alienigenis de libertatibus eis concessis.

Rex archiepiscopis, &c. Salutem. Circa bonum statum omnium mercatorum subscriptorum regnorum terrarum et provinciarum, viz. Alemannie, Francie, Ipanie, Portugalie, Navarre, Lumbardie, Tuscie, Provincie, Cathalonie, Ducatus nostri Acquitannie, Tholosanne, Taturtinue, Flandrie, Brebantie, et omnium aliarum terrarum et locorum extraneorum quacunque nomine censeantur, venientium in regnum nostrum Anglie et ibidem conversantium, nos precipua cura folicitati, qualiter sub nostri dominio tranquillitatis et plene securitatis immunitas eisdem mercatoribus futuris temporibus preparetur; ut itaque vota ipsorum reddantur ad nostra et regni nostri servicia promptiora, ipsorum petitionibus favorabiliter annuentes, et pro statu eorundem plenius assecurando in forma que sequitur ordinantes, subscripta dictis mercatoribus pro nobis et beredibus nostris imperpetuum duximus concedenda, inprimis, videlicet, quod omnes mercatores dictorum regnorum et terrarum salvo et secure sub tuitione et protectione noftra in dictum regnum nostrum Anglie, et ubique infra potestatem nostram alibi, veniant cum mercandisis suis quibuscinque de muragio pontagio et pavagio liberi et quieti; quod infra idem regnum et potestatem nostram in civitatibus burgis et villis mercatoriis possint mercari duntaxat in grosso, tam cum indigenis seu incolis ejusdem regni et potestatis nostre predicte, quam cum alienigenis extraneis vel prenatis, ita tamen quod merces, que vulgariter mercerie vocantur, ac species minutatim vendi possint, prout antea fieri consuevit; et quod omnes predicti mercatores mercandisas suas, quas ipsos ad predictum regnum et potestatem nostram adducere seu infra idem regnum et potestatem nostram emere vel alias adquirere contigerit, possint quò voluerint, tam infra regnum et potestatem nostram predicta quam extra, ducere seu

^{*} I have had the following copy of the Carta Mercatoria examined with the record at the Tower.—EDITOR.

pertare facere, preterquam ad terras manifestorum et notoricrum bostium regni nostri, folvendo confuetudines quas debebunt (vinis duntaxat exceptis) que de eodem regno seu potestate nostra, postquam infra idem regnum seu potestatem nostram ducta fuerint, fine voluntate nostra et licentia speciali non liceat eis educere quoquomodo. Item quod predicti mercatores, in civitatibus burgis et villis predictis, pro voluntate sua bospitari valeant et morari cum bonis suis ad gratum ipserum quorum suerint bospitia five domus. Item, quod quilibet contractus per ipsos mercatores, cum quibuscunque personis undecunque fuerint, super quocunque genere mercandise initus, firmus fit et stabilis, ita quod neuter mercatorum ab illo contractu possit discedere vel resilire, postquam denarius Dei inter principales personas contrabentes datus fuerit et receptus; et si forsan super contractu bujusmodi contentio oriatur, fiat inde probatio aut inquisitio secundum usus et consuctudines feriarum et villarum ubi dictum contractum fieri contigerit et iniri. Item promittimus prefatis mercatoribus, pro nobis et beredibus nostris inperpetuum concedentes, quod nullam prifam vel arrestationem seu dilationem occasione prifa de cetero de mercimoniis mercandisis seu aliis bonis suis, per nos vel alium seu alios. pro aliqua necessitate vel casu, contra voluntatem ipsorum mercatorum aliquatenus faciemus aut fieri faciemus, nifi statim soluto precio pro quo ipsi mercatores aliis bujusmodi mercimonia vendere possint, vel eis alias satisfattis, ita quod reputent se contentos; et quod super mercimonia mercandisas seu bona ipsorum per nos vel ministras nostros nulla appreciacio aut estimacio imponetur. Item volumus, quòd omnes ballivi et ministri feriarum civitatum burgorum et villarum mercatoriarum mer atoribus antedicies conquerentibus coram eis celerem justitiam faciant, de die in diem fine dilatione, secundum legem mercatoriam, de univerfis et fingulis que per eandem legem poterunt terminari; et si forte inveniatur defectus in aliquo ballivorum vel ministrorum predictorum, unde iidem mercatores vel eorum aliquis dilationis incommoda suffinuerint vel sustinuerit, licet mercator versus partem in principali recuperaverit dampna sua, nichilominus ballivus vel minister alius versus nos prout delittum exigit puniatur, et punitionem istam concedimus in favorem mercatorum predictorum pro eorum justitia maturanda. Item quod in omnibus generibus placitorum (salvo cafu crininis pro quo infligenda fit pena mortis) ubi mercator implacitatus fuerit vel alium implacitaverit, cujuscunque conditionis idem implacitatus extiterit, extraneus vel prenatus, in nundinis civitatibus sive burgis, ubi fuerit sufficiens copia mercatorum predictarum terrarum et inquifitio fieri debeat, fit medietas inquifitionis de eisdem mercatoribus et medietas altera de aliis probis et legalibus hominibus loci illius ubi placitum aliud effe contigerit; et si de mercatoribus dittarum terrarum numerus non inveniatur sufficiens, ponantur in inquisitione illi qui idonei invenientur ibidem, et refidui fint de aliis bonis bominibus et idoneis de locis in quibus placitum illud erit. Item volumus ordinamus et statuimus, quod in qualibet villa mercatoria et feria regni nostri predicti, et alibi infra potestatem nostram pondus nostrum in

serto loco ponatur, et ante ponderationem statera in presentia emptoris et venditoris vacua videatur, et quod brachia sint equalia at extunc ponderator ponderet in equali. at cum stateram posuerit in equali statim amoveat manus suas ita quod remaneat in equali; quodque per totum regnum et potestatem nostram unum sit pondus, et una menfura, et signo standardi nostri signentur; et quod quilibet possit babere stateram unius quarteroni et infra, ubi contra dominum loci aut libertatem per nos seu antecessores nostros concessam illud non fuerit, seve contra villarum aut feriarum consuetudinem bastenus observatam. Hem volumus et concedimus, quòd aliquis certus bomo fidelis et discretus London' residens assignetur justiciariis mercatoribus memoratis, coram quo valeant specialiter placitare et debita sua recuperare celeriter. si vicecomites et majores eis non facerent de die in diem celeris justitiæ complementum, et inde fiat commissio extra cartam presentem concessa mercatoribus antedictis, scilicet de biis que sunt inter mercatores et mercatores secundum legem mercatorian deducenda. Item ordinamus et flatuimus, et ordinationem illam flatutumque pro nobis et beredibus nostris imperpetuum volumus firmiter observari, quod pro quacumque libertate, quam nos vel beredes nostri de ceterò concedemus, prefati mercatores supra scriptas libertates vel earum aliquam non amittant. Pro supradictis autem libertatibus et liberis consuetudinibus obtinendis, et prisis nostris remittendis eisdem, sepe dicti mercatores universi et singuli pro se et omnibus aliis de partibus suis nobis concorditer et unanimiter concesserunt, quod de quolibet dolio vini quod adducent vel adduci facient infra regnum vel potestatem nostram, et unde marinariis freitum solvere tenebuntur, solvent nobis et beredibus nostris nomine custume duos solidos ultra antiquas custumas debitas et in denariis solvi consuetas nobis aut aliis infra quadraginta dies postquam extra naves ad terram posita fuerint dista vina. Item de quolibet sacco lane, quem disti mercatores aut alii nomine ipsorum ement et de regno nostro educent aut emi et educi facient, solvent quadraginta denarios de incremento ultra custumam antiquam dimidie marce que prius fuerit persoluta ; et pro lasto corigrum extra regnum et potestatem nostram vebendorum dimidiam maream supra id qued ex antiqua custuma antea solvebatur; et similiter de trescentis pellibus l'anatis extra regnum et potestatem nostram ducendis quadraginta denarios ultra certum illud quod de antiquâ custumâ fuerat prius datum. Item duos folidos de qualibet scarlata et panno tincto in grapo. Item decem et octo denarios de quolibet pamo in quo pars grani fuerit intermixta. Item duodecim denarios de qualibet panno alio fine grano. Item duodecim denarios de quolibet cere quintallo. Cumq' de prefatis mercatoribus nonnulli corum alias enerceant mercandisas, ut de averio ponderis et de aliis rebus subtilibus. sicut de pannis tarseum, de serice, de cindalis, de ceto et aliis diversis mercibus, et de equis, etiam ac aliis animalibus, blado et aliis rebus et mercandisis multimodis,

que ad certam custumam facile poni non poterunt, iidem mercatores concesserunt dare nobis et beredibus nostris de qualibet libra argenti estimationis seu valoris rerum et mercandisarum bujusmodi, quocunque nomine censeantur, tres denarios; de libra in introitu rerum et mercandisarum ipsarum in regnum et potestatem nostram predillam, infra viginti dies postquam bujusmodi res mercandise in regnum potestatem nostram adduste et etiam ibidem exonerate seu vendite suerint, et similiter tres. denarios de qualibet libra argenti in eductione quarumcunque rerum et mercandifarum bujusmodi emptarum in regno et potestate nostre predictis ultra custumas antiquas nobis aut aliis ante datas; et super valore et estimacione rerum et mercandisarum bujusmodi, de quibus tres denarii de qualibet libra argenti sicut predicitur funt solvendi, credatur eis per litteras, quas de dominis aut sociis suis ostendere poterunt, et si literas non babeant stetur in bâc parte ipsorum mercatorum si presentes fuerint, vel valectorum suorum in eorundem mercatorum absencit, juramentis. Liceat insuper sociis de societate mercatorum predictorum infra regnum et potestatem nostram predictam lanas vendere al is : fociis suis et similiter emere ab eisdem absque custum's solvenda; ita tamen quod diete lane ad tales manus non deveniant, quod custuma nobis debita defraudemur. Et preterea est sciendum, quod postquam sepedicti mercatores semel in uno loco infra regnum et potestatem nostram custumam nabis concessam superius pro mercandisis suis in forma solverint supradicta et suum babeant inde warrantum, erunt liberi et quieți in omnibus aliis locis infra regnum et potestatem nostram predictam de solutione custumæ bujusmodi pro eisdem mercandisis seu mercimoniis per idem warrantum, sive bujusmodi mercandise infra regnum et potestatem nostram remaneant; five exterius deferantur, exceptis vinis que de regno et potestate nostra predictis fine voluntate et licentia nostra ficut predictum est nullatenus educantur. Volumus autem ac pro nobis et beredibus nostris concedimus, quod nulla exactio, prifa, vel prestatio, aut aliquod aliud onus, super personas mercatorum predictorum, mercandisas seu bona eorundum, aliquatenus imponatur contra formam expressam superius et concessam. Hiis testibus venerabilibus patribus Roberto Cantuar' archiepiscopo totius Angl' Primate, Waltero Coventr' et Litchf' episcopo, Henrico de Lacy comite Lincoln', Humf' de Bobun comite Hereford et Essex as Constabular' Angl', Adomaro de Valencia, Galfredo de Geynville, Hugone le Despencer, Waltero de Bello-Campo senescallo bospitii nostri, Roberto de Bures, et aliis. Dat per manum nostram apud Wynde sor' primo die Februar'.

And I do not find that there were any customs answered between the 3. E. 1.

and 31. E. 1. for goods imported either by aliens or fubjects.

* Thus it continued all the time of E. r. and until the 5. E. 1. and then the lords ordeiners, being authorized by act of parliament with great power,

did annull this Carta Mercatoria, viz. nous ordenioms, que touts manners de eustomes et maltouts, levyes puis le coroniement le roy Edward Fitz le roy Henry, soient entyrement oustees et de tote estints pur tots jours, nent contresteant le charter que le dit rey Edward fist al merchants aliens, purceo que el fuit fait countre le grand charter et encountre le franchis de la citie de Londres et sans assent de Barnage, &c. sauvant ne quident au roy les coustomes de leyne peaux et quires, cest ascavoire de chescun sack de layne demy marke, et de 300 peaux lanus demy marke, et de last de quires un marke.

Presently upon this the collection of the petty customes of merchant-strangers ceased, viz. from 9 Osteb. 5. E. 2. and so they continued uncollected and unanswered until the 20th July 16. E. 2. and from that time forward the petty customs by merchants-stangers were answered; and this

happened in this manner.

The king, Edward the second, having gotten the better of the earl of Lancaster at his parliament à die Santii Baptiste in tres septimanas 15. E. 3. a repeal was made of these ordinances of 5. E. 2. as prejudicial to the rights of the crown, and that repeal commanded to be inrolled in the courts of Westminster, Trin. 15. E. 2. Rot. 33.

And thereupon shortly after, viz. 20 July 16. E. 2. (for he began his reign the 7th of July) these petit customes began to be answered; and the warrant for the collecting of them is entered upon the customer's account for the year ending 17. E. 2. viz. in the foreign accounts de tempore E. 2. Rot. 54. for Newcastle, and also for Scarborough. And thus it continued answered al! the time after; and in farther security of it, king E. 3. in the beginning of his reign, consirmed the Carta Mercatoria granted by king E. 1. and for the better security both of their privileges, and of the duties to be answered by them to the crown, they received at last an affirmation by the statute of the staple 27. E. 3. eap. 1. et 26. and since that time it hath been constantly and unquestionably allowed.

What privileges and exemptions have been granted to the Hans merchants, viz. those principally of Collen and Lubeck, and to the merchants of Almaine, and of the Stilyard, in reference to aliens duties, vide Carl. 18. E. 1. m. 18. Cart. 28. E. 1. n. 15. and what alteration or advance there have been in them, we shall deliver as they occur in their several series of time.

In the mean time thus much shall suffice, touching the original and process of the petty customes in the time of E. 1. with the interruptions and renewals of them in the times of E. 2. and E. 3.

And thus much also shall suffice touching the time of E. 1. Little else occurs of note concerning it, but only of some impositions upon wines and other petty matters, that vanished, and scarce so much as came to account.

C A P. VIII.

Concerning customes, subsidies, and impositions in the time of Edward the second.

THE reign of this king was troublesome and tumultuous: he was much under the power of the nobility, especially from the fifth till the fifteenth year of his reign; and there are but few memorials of his parliaments extant, whereby we may have any light touching these things. The most considerable business is that which is before remembered, viz. the great and petty customes; and little or nothing else, that I can observe, was answered from the first to the fifth year of his reign; both the great and petty custome was accounted for from the fifth to the sixteenth year of his reign; the petty customes of merchants-strangers were suspended by the ordinance of the lords ordeiners abovementioned; in the sisteenth year of his reign, these ordinances were repealed, and petty customes, and nothing else, that I can find, was answered from thenceforth during his reign.

C A P. IX.

The proceedings touching subsidies, customes, and impositions, during the reign of king Edward the third.

I COME to the time of king Edward the third, who was a gallant and a warlike prince, reigned long, and his time very full of great variety in relation to the customes and other duties, especially relating to the sea.

At the parliament held at York, which was die Veneris ante festum Michaelis, 6. E. 3. there was a subsidy of demy marke upon a sack of wooll, demy marke upon three hundred woollfells, and twenty shillings upon every last of hides ultra antiquam eustumam, which was granted to the king for one year, to begin at the Purification following. But upon the parliament-roll of that year, no such grant appears. In all probability, it was an ordinance by the king and the lords; and indeed so it is recited by the writ that repeals it. Claus. 7. E. 3. m. 7. Licet nuper per nos magnates et proceres regni nostri ordinatum extitisset, quòd mercatores indigena, &c. teste 30 Junii, 7. E. 3. But the king, by the advice of this council, repeals that subsidy, and supersedes the commission for collecting it. The pretence was, that it would imbase the price of woolls:

but it is also necessarilis de causis. Possibly the people were not satisfied in the legality of the imposition. But yet afterward, the arrears were levied and excused by necessity.

After this, to mend the matter, the merchants grant to the king upon his pressing occasion, ten shillings of every sack of wooll, ten shillings of every three hundred of woollfells, and twenty shillings of every last of hides exported by denizens or aliens, ultra antiquas consuetudines from the 14 Maii 7. E. 3. for one year. But in the parliament held 8. E. 3. complaint was made against this imposition as illegall and burthensome. And thereupon the king by the advice of his councill, by his writt bearing date 21 Sept. 8. E. 3. repeals that imposition, and supersedes the collection of it. Claus. 8. E. 3. m. 18.

By the stat. 11. E. 3. cap. 1. it is enacted, that none, under pain of death, shall export woolls out of the realm, till it be otherwise provided by the king and his councill.

This gave the king an opportunity to lay impositions, which could hardly be avoided; viz. he granted dispensations to persons to carry out wooll, paying what sums he pleased. And accordingly he took by this kind of imposition forty shillings upon every sack of wooll, the like upon three hundred woollfells, and three pounds upon every last of hides, of denizens, and near double as much of aliens, both in the twelfth and thirteenth years of his reign.

In 12. E. 3. the people complained and grew discontent with the imposition. And on the other side the king by his letters put the archbishop of Canterbury to make his excuse to the people in respect of his necessity. Rot. Almaine, 13. E. 3. n. 22.

But the king's necessities and great occasions increasing, and these illegal supplies coming very hardly from the people, a parliament is summoned, viz. 13. E. 3. at Westminster, where the commons grant the king in aid of his warr the tenth sheafe sleece and lamb for the next year, to be paid in two years; but provision is made, que le maltolt, que ore de novell est levy de lenes, soit outrement abatue et soit tenue vielle custume, et qu'ils eient per point de charter et enrollment de parlement, que mes ne soit levy tiel custome. Rot. Parl. 13. E. 3. n. 5. et ibidem, n. 13. the petition is again renewed against the maltolt of woolls and an imposition upon lead sans assent de la commune ou de graundz.

Yet the king's necessities found a way to continue this imposition; and to give it the better countenance, it is taken upon a kind of agreement be-

tween the king and the merchants for a free trade with woolls to Bruxelles, viz. forty shillings at the lading port, and forty shillings at Bruxelles upon every fack of wooll.

At the parliament held the Wednesday after Midlent, anno 14. E. 3. cap. 21. the commons pray the king that there be an act passed that no more custom be never taken of a sack of wooll but six shillings and eight pence, nor of lead tinn leather nor woollsells but the ancient custom. On the other side the king prays the lords and commons, that they would grant to him some aid upon woolls leather woollsells and other merchandize. The lords and commons thereupon grant the king forty shillings on every sack of wooll, forty shillings on every three hundred woollsells, and forty shillings of every last of leather and other merchandizes that pass beyond the sea after that rate, to hold from Easter to Whitsuntide, and from thence for a year. And for this the king grants by consent of parliament, that after that term expired he nor his heirs shall not demand, affess, nor take of Englishmen, of a sack of wooll not above half a mark, and upon woollsells and leather the old custom; the sack to be twenty-six stone, and every stone fourteen pound. Observe upon this act:

1. This is the first grant that I find of any subsidy of merchandize exported other than woolls woollfells and leather; and this was a subsidy measured by the price of leather and woolls in nature of a poundage.

2. That now the fack was reduced from twenty-eight stone to twenty-fix; and provision was made, that for every fack exported two marks of

filver should be brought to the exchange.

And now a man would think, that the old customes and no more should without question have continued without inhauncing. But it proved otherwise. The king's warrs and other occasions increased, and put him upon means to supply his wants, notwithstanding other large contributions by the people; and thereupon the merchants granted to the king a maltolt of forty shillings upon every sack of wooll, besides the old custome: and though it seems this was done only by the lords and the merchants, yet, however it came to pass, it was entered upon the parliament-roll 17. E. 3. n. 17. It is formally entered as a grant by the lords and commons, viz. Et le dits grantz et communes se sont assential, que per tout cel temps nostre segnior le roy prendra de chescun sak de lene que passer 40s. de subsidie ouster l'auncient custome. The time was till Michaelmas next and for three years after, during which time certain prises were set upon the woolls of severall countries,

countries, below which they should not be fold. Whereupon the same parliament No 28 the commons pray,

Que le maltolt de leynes se teigne a demy marke, come en temps de ses progenitours ad este uses, & per lestatute puis en votre temps grauntees. Et coment que le merchants eint graunt per eux sans assent des communes un subsidie de 40s. de chescun sack de leyne, outre le droiturall, maltolt de demy marke, voillez s'il vous plest aver regard, que tut est en charge et mischief de vos communes. Par quoi cel mischief, si vous plest, ne voillez soeffrir, mes soit amendez à cest parliament, car c'est encontre reason, que le commune de lur biens soient per merchants charges.

The answer was,

L'entent de nostre seignior le roy n'est pas de charger les communes per le subsidie que les merchants lui ont grantes, n'en poet estre entenduz en charge des communes, no'ement desicome les communes ont mys un certeine prise sur les leynes permy les countees, le quel prise le roi veet que estoise, et que de dedeins cel prise nulles leynes soient achates, sur forseiture des mesmes les leynes in les maines les merchants que les issint achatent.

But yet it rested not here. The king's warrs in France grew chargeable, and the former imposition of 40s. complained of in 17. E. 3. ceasing Michaelmas 20. E. 3. there was a new imposition by the consent of the merchant of 40s. per sack set upon woolls, or rather continued for two years.

A parliament was held the Monday after Christmas anno 20. E. 3. which was after the continuation of that tax; and Rot. Parl. 30. E. 3. n. 18. the commons petition against it, viz.

Item pry les commons, que le grand subsidie de 40s. al sack de leyne soit ouste, et l'auncient custume-pay, come autre soits seust assent et graunte.

RESPONSIO. Quant a cest point les prelates et autres, veants le necessity que le roy avoit d'estre aide, avant son passage per de la, pur recover ses droitures et pur desender son realme d'Angletere, assenteront per accord des merchants, que nostre seignour le roy avereit, en ayd de sa dite guerre et pur desense de sa dite terre, 40s. de chescun sack de leyne que passer as parts ouster mere pur deux auns prochiens a venir; et sur meisme le grant ount divers merchants fait plusors ebevances a nostre dit seignour le roy en ayd de sa dit guerre, per quoi tiel subsidie ne poit estre repelles sans assent de roy et de ses dits grauntz.

The impositions upon woolls being great, the people began to resume the manufacture of cloth, which had been long intermitted; and by this means the exportation of wooll began to be flack, and the people made cloth and exported it, upon which no custom was as yet by law sett. Thereupon the king did set an imposition upon cloth, viz. upon denizens sourteen pence for every cloth exported, and upon aliens one-and-twenty pence for every cloth, and some other customs upon woollen manufactures, wherein he kept some proportion to the rate of the great custome upon woolls. Vide Rot. Custom. 21. E. 3. Rot. Fin. 24. E. 3. m. 19. Jam magna pars lana regni pannificatur, de qua custuma aliqua nobis non est soluta, &c.

In the parliament of 21. E. 3. inter bundellam petitionum the commons

complain of this imposition.

Item pry la commune, que la ou ses merchants soloient achater drapes et les soloient amesner ouster le mere, et auxi merchants-straingers que soloient vener in Angletere pur achater drapes, et per reason de custome ja de novell fait, cest ascavoire de chescun drape 14d. des merchants d'Angletere, et pur gents estrainges pur chescun drape 21d. issint que per reason de cel greivous custome nul estrange merchant vient, et tote la commune de la terre des merchants et labourers impovere; de quou ils pry remedy, et que cele custome soit austee. Item per drapes de worsted une novelle custume, sur chescun drape un denier, et de strainges 1d. ob. et de shescun byte 10d. et des strainges 15d. a graunt damage du people labourers, et que cel custome soit austee.

RESPONSIO. Il pleist au nostre seignior le roy, as prelates countes et autres grauntz, que ceste custome estoyse en sa force, car il est auxi bien reason, qu'il preigne tiel prositt des drapes overees deins le royalme, et mesnes bors du royalme, come de laynes carryes bors de terre selonc l'afferant des drapes overees de sack.

This petition and answer are not entered upon the parliament-roll, because never affented unto by the lords. But they are upon the bundle of petitions of that year.

So here we had these impositions which obtained the name of customs:

Of every woollen	cloth,		desire della
Of denizens			14d.
Of aliens			21d.
Of every cloth of	worsted,	and are	, shakibi, nat
Of denizens		North Torres	1d.
Of aliens		and the	1d. ob.
Of every bedd,	105,150,10	STATE OF THE	
Of denizens		la de la como	10d.
Of aliens			15d.

They are accordingly printed amongst the petitions of the commons of 21. E. 3. in 2. Rot. Parl. 168. See No 31.—Editor.

But these impositions were intended only of cloth without grain; but there was besides this here mentioned a farther imposition, viz.

1. Upon denizens - 2s. 4d.

Upon aliens - 3s. 1d. after 3s. 6d.

2. Upon half graine,

Denizens - 21d.
Aliens - 25. 1d.

Though it was at first by the king's commission as an imposition, yet it obtained in perpetuity.

1. First, because it carryed a reason of equity, being laid upon the manufacture of woolls exported, and proportioned according to the rateable estimate of the custome of a sack of wooll.

2. Because now it had a countenance by the consent of the lords in parliament, who judged it reasonable. And accordingly these customes upon oath continued in the times of all succeeding kings, though with some augmentations, as shall be shewn in due time.

And it did not only continue, but was extended proportionably to all new manufactures of woollen.

Ret. Parl. 15. R. 2. n. 43. This custome was taken by the customers of kerseys exported, and the merchants complain of it, and desire it may be discharged.

The king's answer was, Pur ee que le roye est inherittez per discont apres la mort de ses progenitors de custume de toutz maneres des draps faitz de leine en Angletere, et passants hors de realme, le roy voet, que touts ceux, que vorront passer ascuns drapes, soient ils kerseys ou autres, payont ent la custome solonc les ordinances et statuts ent faits.

By the act of the 11. H. 4. c. 7. this duty is to be paid by aliens for cloth made into garments and by them exported proportionably.

Rot. Parl. 2. H. 5. pars 1. n. 39. it appears that this rateable custome was taken of Cornish and Devonshire cloths called streits, viz. for every four dozen of streits fourteen pence of denizens, &c. They complain of the excessive proportion, and defire it may be reduced to the rateable proportion of broad cloths, viz. for every dozen of streits white or russet one penny, for every dozen coloured two pence. But they prevailed not.

We shall see in this commission following, a great improvement of this imposition.

Anno

Anno 2do. Edwardi Ati, Rot. 2.

Rex dilecto fibi Thoma Barton falutem. Sciatis, QUOD CUM mercatores extranei et alienigena, cum bonis et mercandisis suis, in regnum nostrum venientes, pro quibuscunque libertatibus et immunitatibus eis per dominum Edwardum nuper regem Angliæ progenitorem nostrum pro se et beredibus suis infra eundem regnum et potestatem nostram imperpetuum obtinendis, teneantur nobis solvere, pro mercandisis et rebus suis quibuscunque infra dictum regnum et potestatem nostram predictam adducendis et de codem coducendis, ultra antiquas custumas nobis aut aliis inde debitas, prestationes et custumas subscriptas, viz. de quâlibet scarleta de panno tincto in grano duos solidos; item 18d. de quolibet panno in quo pars grani fuerit intermixta; item 12d. de quolibet panno sine grano; item de quolibet quintallo cere 12d. item de averio ponderís et aliis robus subtilibus, sicut de pannis tarseum de serico et cindalis de ceta et de diversis aliis mercibus, de equis etiam et aliis animal bus bladis et aliis rebus, et mercandifis omnibus, que ad veram custumam de facili poni non possint, de qualibet libra argenti estimacionis vel valoris rerum et mercandisarum bujusmedi, quocunque nomine censeantur, 3d. de libra in introitu rerum et mercandisarum predictarum in regnum et potestatem nostram predictam infra viginti dies postquam bujusmodi res et mercandise in regnum et potestatem nostram predistam addutte et ibidem enonerate seu vendite fuerint, et similiter 3d. de qualibet libra argenti in eductione quarumcunque rerum et mercandifarum bujusmodi emptarum et in regno et potestate nostris predictis ultra custumas predictas nobis aut aliis antedatas; ita semper quod super estimatione vel valore rerum et mercandisarum bujusmodi, de quibus 3d. de qualibet libra argenti, ut permittitur, sunt solvendi, credatur eis per litteras quas de dominis aut de sociis suis oftendere poterunt; et si litteras non babeant, stetur in bac parte ipsorum mercatorum si presentes fuerint, vel vallettorum suorum in eorundem mercatorum absencia, juramentis; quòdque sepe dilli mercatores, postquam semel in uno loco in regno et potestate nostris predictis custumam nobis superius concessam pro mercandisis suis in forma solverint supradicta, et fuum kaceant inde warrantum, liberi fint et quieti in omnibus aliis locis infra regnum et potestatem nostram de solutione bujusmodi custumæ pro eisdem mercandisis et mercimoniis per idem warrantum, five bujusmodi res et mercandise in regnum et potestatem predictam remaneant, five exterius deferantur. Ac in statuto, in parliamento Henrici quarti nuper de facto et non de jure regis Anglia defuncti anno regni sui undecimo tento, edito, inter cetera contineatur, quòd omnes bujusmodi mercatores alienigene extunc solvent custumam et subsidium pro vestibus factis et aptatis, tam de pannis et scarleta et sanguayne et aliis coloribus de integro grano

^{*} See xi. Hen. 4. c. 7. in the printed flatutes .- EDITOR.

vel de dimid. grano, ac etiam de pannis in grano tinctis, et omnibus aliis pannis lanis scissis extra dictum regnum nostrum traducendis juxta ratam et quantitatem corundem: Assignavimus te ad subsidium predictum in portu villa Gippivici, et in singulis portibus et locis eidem portui adjacentibus, tam ad easdem custumas et subsidia pro bujusmodi vestibus sic aptatis juxta formam statuti predicti quam ad predictas alias custumas et prestationes in portu et locis predictis, necnon ad custumam pannorum de lanis in Anglia factorum ad partes exteras ducendorum juxta ordinacionem inde nuper fastam, viz. quatuordecim denariorum de indigenis, et 21d. de alienigenis, de quolibet panno de assista; 2s. 4d. de indigenis, et 3s. 6d. de alienigenis, de quolibet panno de scarletta et alio panno de integro grano; et medietatem cujus custumæ de quolibet alio panno de dimidio grano, in quo pars grani suerit intermixta; ac etiam ratam earundem custumarum de quolibet alio panno ultra vel infra assisam, prout major fuerit vel minor juxta portionem inde contingentem, necnon Id. de indigenis, et Id. ob. de alienigenis, et de uno panno de integro worfted 5d. de indigenis, et 7d. ob. de alienigenis; et de uno panno et uno lecto simplici de worsted 9d. de indigenis, et 13d. ob. de alienigenis, pro uno letto duplicato; in portu et locis predictis quamdiu nobis placuerit, in proprid persona tud, et non per substitutum, levand' et colligend' et ad opus nostrum recipiend' & ad sigillum nostrum quod dicitur cocquet in portu prediti custodiend nobis respondeantur ad scaccarium nostrum; et ideo tibi precipimus, quod circa premissa diligenter intendas, et ea facias et exequaris in forma predicta, in cujus rei, &c. Teste rege apud Westm' 28°. die Aprilis anno regni nostri secundo.

Consimil' assignatio fast' eidem Ibomæ Barton ubi mercatores Hanse mencionant' dat' die et anno supradistis, Rot. 3tio.

Consimil' assignatio fatt' Johanni Talbott 10 die Aprilis anno primo Edwardi quarti, Rot. 3tio et 410.

When we come down to queen Mary's time, we shall see, how this was improved yet farther.

But thus this custom upon cloth was answered down to the time of queen Mary. Vide Cooke Magna Carta, cap. 30. p. 60. for the legality of this imposition upon cloth. Now how this should be answered by aliens, grew to be a great question; for they were charged by the Carta Mercatoria for three-pence per pound, and for twelve-pence for every cloth without grain.

These things were therefore resolved:

1. That the three-pence per libram chargeable by Carta Mercatoria did not extend to these goods exported or imported by them, which were charged by that charter with another duty as wines and cloths.

2. That for pieces of cloths, that were not cloths nor half cloths, merchants aliens should not be charged with the rateable proportion of twelvepence, or one-and-twenty-pence for a cloth, but for that they should pay only their poundage of three-pence per libram, in respect of a clause in the charter of the merchants aliens that favoured that construction, and also by reason of usage.

3. That although there were formerly by Carta Mercatoria an imposition of twelve-pence upon every cloth fine grano, and now here was one-and-twenty-pence imposed upon such a cloth, the Hanse merchants should not be charged with both; but paying there one-and-twenty-pence, which was the greater proportion, they should be discharged of the twelve-pence. All this appears by Claus. 41. E. 3. m. 17. pro mercatoribus extraneis, et Communia in scaccario P. 35. E. 3. Rot. London' pro Johanne de la Paneiry et Willielmo Clompton collectoribus parvæ custumæ London'.

4. But for other merchants aliens, they did not only answer the duty, by Carta Mercatoria, but also the imposition of one-and-twenty-pence, &c.

upon cloths.

This custome of cloth was conceived so much the same with that of woolls, which was settled by the third of Edward the first, and so intirely due in proportion by virtue of that grant, that it assumed the name, viz. the coquer, and passed by that warrant. And whereas the sinall customes themselves, due by Carta Mercatoria, if concealed, did not induce a forfeiture of the goods themselves, because there was no act of parliament that gave that forfeiture in that case; yet for cloth uncustomed the very goods themselves were forfeited, as well as in case of woolls; because this custom was conceived due by law upon the same account as the custom of wools. Communia in scaccario, M. 6. H. 4. Rot. 20.

But now to return where I left off,—we have feen the state of impositions, and their remissions and continuations, until the 21. E. 3. and by the way

we have met with this imposition upon cloth.

We have seen that the merchant's charge of forty shillings for every sack of wooll was rivetted upon the people from Michaelmas the 20, E. 3. for two years, which ended Michaelmas 22. E. 3.

But during the continuance thereof, there was a farther charge imposed for convoy of merchants, viz. upon every fack of wooll two shillings, upon every tunn of wine two shillings, and upon every twenty shillings of goods imported fix-pence. The commons complain thereof Rot. Parl. 21, E. 3.

n. 11. But all that they could obtain was, that only two shillings per sack should be taken for that purpose, till Easter next. Vide ibidem, n. 58.

They, again, in the same parliament petition for the removing of the former imposition upon woolls, viz. forty shillings per sack, and that woolls. may pass at the ancient custom, Rot. Parl. 21. E. 3. n. 29. but they could

not get it off.

Another parliament is summoned, and held the morrow after Midlent, 22. E. 3. The commons were yet under the imposition for woolls until Michaelmas following; and Rot. Parl. 22. E. 3. n. 8. they pray, que le passage des levnes et autres mercandises soient overts sans faire apprests outer la custome, &c. The answer is, soit le passage overt, que obescun passe franchment, savant au roy seo que sui est une. He still kept the former maltolt till the time of its expiration.

After the expiration of that imposition, which ended at Michaelmas, 22. E. 3. the merchants are again drawn to yield to a new imposition of forty smilings for every sack of wooll; which imposition continuing, a parliament is himmoned and held in the octaves of the Purisication, 25. E. 3. And in that parliament, Ros. Parl. 25. E. 3. n. 22. the commons grant a subsidy of forty shiftings upon every sack of wooll, and upon every last of leather, to continue for two years from Michaelmas next; but withall petition, that the imposition of the merchants might be discharged. The king accepts their grant, but continues the former imposition till the new began, excusing the same by his great necessities and occasions.

A new parliament furnimoned and held die Lune prox. post festum Santti Mathei, 27. E. 3. The former subsidy of woolls woolls and leather is

continued from that Michaelmas for three years.

At that parliament the ordinances for the staple were settled, and thereby edp. 1. the old custom of woolls woollfells and leather declared, and a new subsidy of aliens in perpetuity of three-pence upon every sow of lead settled.

The fublidy of almage was ferried in the precedent parliament, viz. that

of provisors, + cap. 4. whereof in due time.

A parliament is summoned and held Crastino Martini, 29. E. 3. The former subsidy of woolls woollfells and leather is continued for fix years. Rot. Parl. 29. E. 3. n. 35.

A parliament is summoned and held 15 Michaelis, 26. E. 3. and a subsidy is granted to the king of 20s. upon every sack of wooll, 20s. upon every 300 woollsells, and 40s. of every last of leather, over the ancient custome, to hold for three years from Michaelmas last. Rot. Parl. 36. E. 3. n. 35. But ibidem, n. 26. there is this additional provision by act of parliament, viz. Que après le dit terme riens ne soit prise ne demaund, sorsque l'auncient custome de demy marke, ne que cest grant ore sait, ne que ad est sait devant ces beures, ne

foit trete en example ne charge de common en temps avener; et que merchants degizens puissent passer ove lour leynes si avant come les forrens sans estre restraine; et que nul subsidie, ne autre charge, soit mise, ne grant, sur les leynes per les merchants, ne per nul autre desore en avaunt sans assent du parliament.

At the parliament held 8vis. Hill. 38. E. 3. viz. Rot. Parl. n. 9. the commons grant to the king a subsidy of 40s. of every fack of wooll, 40s. of every three hundred woollsells, and four pounds of every last of leather, exported, over and above the ancient custome, to hold from the feast of Purisication until Michaelmas following, and from thence for three years.

And ibidem, n. 24, 25. the staple removed into England, and all new fees and impositions for the staple repealed, and likewise 40d. per sack taken at the staple at Calais, and all other unreasonable impositions, repealed. And ibidem, n. 26. the forfeiture of ships for goods uncustomed without privity of the owner removed.

At the parliament summoned and held the first of May 42. E. 3. viz. Rot. Parl. 42. E. 3. n. 9. a new subsidy is granted of woolls and leather exported, from Michaelmas following for two years; viz. of every sack of wooll 36s. 8d. of every two hundred and forty woollfells 36s. 8d. of every last of leather four pounds, over and besides the antient custom of half a marke for every sack of wooll and two hundred and forty woollfells, and a marke for every last of leather.

And hereby it appears, that fince the last parliament the proportion of 300 woollfells answering a sack of wooll was reduced to 240 woollfells, and an equal custome and subsidy charged upon them with a sack of wooll; and accordingly that proportion held always after. Possibly, upon an exacter estimate than was formerly taken, they found, that 240 woollfells did countervaile a sack; and therefore the custom of a sack was charged upon 240 woollfells afterward, and not upon 300, as was done till after the 38. E. 3. as appears by comparing Rot. Parl. 38. E. 3. n. 9. with 42. E. 3. n. 10.

Another parliament is held 8vis. Trin. 43. E. 3. and when as yet there was above a year to come of the former subsidy, the former subsidy is enlarged in time and value; viz. 43s. 4d. of every sack of wooll, as much of every two hundred and forty woollfells, and 4l. of every last of hides, outre l'auncient custome de demy mark de chescun sack de wooll de denizens, 10s. d'aliens; demy mark de chescun 240 woollfells de denizens, et 10s. d'aliens; et un mark de chescun last de quires de denizens, et 20s. d'aliens, for three years from Michaelmas next.

In the parliament 45. E. 3. there was no new subsidy of woolls or leather granted, for the former had continuance. But, ibidem, n. 42.—priont les com-

mons, que null imposition ou charge soit mise sur les leynes peals lanutes ou quires, ouster le custome et subsidie grants au roy, nul part sans assent de parliament.

RESPONSIO. Le roy le voet ; et si nul soit mise puys le statute, foit repelle.

In the parliament held Crastino Animarum, 46. E. 3. viz. Rot. Parl. n. 10. there is granted a new subsidie of woolls and leather exported for two years from Michaelmas next; viz. of denizens 43s. 4d. of every sack of wooll, 43s. 4d. of every two hundred and forty woollfells, and four pound of every last of leather, over the ancient custome; and of aliens, of every sack of wooll 10s. of every two hundred and forty woollfells four marks, and of every last of hides eight marks, besides a 15mc. granted.

But befides this, after the close of the parliament, and when the knights of the counties were dismissed; the burgesses and citizens were called before the prince and some of the bishops and lords, and there ventured to grant for one year a kind of subsidy of tunnage and poundage; viz. two shillings upon every tun of wine imported, and sixpence of every twenty shillings of merchandize imported or exported. This was taken formerly by the like composition with the merchants. But it was the first time, that I can sind, that it came so near to a parliamentary consent, though it were but a lame business.

A new parliament is held Crastino Edmundi Regis, 47. E. 3. at which parliament, n. 12. a fifteenth was granted for two years, and a subsidy of tonnage and poundage for two years; viz. 6d. per libram of all merchandizes imported and exported, except woolls woollfells leather and wines; and two shillings per tunn of wines, viz. the first year absolutely, the second year upon condition if the war continued; and also they granted the great subsidy of woolls.

Although the like tunnage and poundage was taken by way of capitulation with the merchants almost ever since the 21. E. 3. as appears by the complaints thereof in parliament of 21. and 25. E. 3. and after the end of the last parliament by capitulation with the burgesses; yet this was the first time it was settled by parliament.

Indeed by the statute of 14. E. 3. c. 21. abovementioned, somewhat like a poundage was granted; and by the *Carta Mercatoria* a poundage, viz. of 3d. per libram and two shillings per ton, was granted by aliens. But this was the first regular settled subsidy of tunnage and poundage, charging denizens as well as aliens, as I observe.

^{*} This fingular grant by the citizens and burgesses without the knights of the shire is in the printed rolls of parliament, v. 2. p. 310. n. 15.—EDITOR.

The next parliament is held, as I observe, die Lane post session Sancti Georgii, 50. E. 3. At this parliament, Res. Parl. n. 9. the great subsidy of woolls woollsells and leather granted 46. E. 3. n. 10. continued from Michaelmas next for three years; but no new grant of the subsidy of tunnage and poundage, and the commons excuse it by reason of their poverty.

From the 27th year of this king until some time before the 50th of his reign, merchants were not much troubled with impositions by bare imposition, though there were some paid by capitulation, especially upon staple commodities; partly because there were strict provisions from time to time made against them; but principally because the parliaments all along gave the king liberall supplies for his warrs. I do not remember any thing in that intervals, but only the tunnage of wines taken for the convoy of merchants, taken purely by imposition.

But the king began now to grow old; and there were buse instruments about the 49th year of this king's reign, that put the king upon new impositions, viz. for every sack of wooll transported to any place but Calais 11s. 4d. upon the exchange of every twenty shillings, &c. for which Richard Lyons and the lord Latimer, the instruments thereof, were punished

in parliament, viz. Rot. Parl. 50. E. 3. n. 17. 24.

And in that parliament petitions were against new impositions, both such as were fett by the king and by officers; viz. for chalking, mesonage, God'spenny, cocquett, tronage, Rot. Parl. 50. E. 3. n. 163. and that they that were instrumental to sett new impositions without act of parliament might suffer death; but this was too severe, and prevailed not. Ibidem, n. 191.

At the parliament held the 15me. Hill. 51. E. 3. I find not any subsidy

granted upon merchandize; for the former was continuing.

In this parliament, n. 25. the houses among other things petition, que en tomps avener vos prelates, countes, barons, commons, chizens et burgesse de votre realme, ne soient desore charges, molestes, ne greves, de common ayde faire où charge sustiner, s'il ne soit per common assent des prelates, dukes, countes, barons, et autres gents de common du dit realme, et ceo en plein parliament; ne nul imposition mise sur les leynes, peaux launtes, quires, si non l'auntient custome, cest deavoire, de sack de leyne demy marke, de troys cent peaux launtes demy marke, de tust de quire un mark de custome, tantsoulement, solone le statute suit in l'an voire raigne 14m. savant vous le subsidie a vous grante tanquee a revisine temps limits à lairein parliament, et rient levez a ore. As to this part of the petition the answer is, quant à ceo que charge ne suisse mys sur le people sans common assent, le ray n'est

my en valentee de ce-faire fans graund necessity, et pur le defence du realme, et la on il le purra faire per reofon; et quant a ceo que impositions ne soient mises sur les leynes fans effent de prelates, dukes, countes, barons, et autres gents de la commune. de son realme, il y ad estatut ent fait, quele roy voet qu'il estoyse en sa fource.

But this was never drawn up into an act; and therefore the practice of taking of a demy marke upon 240 woollfells continued, according as it. had been practifed for ten years before, notwithstanding the statute La Elgow in parallel templet della della della

And thus much shall serve touching the customs of goods imported and exported and it is the

The things remarkable in the long and glorious reign of king Edward the third in reference to these port duties are principally these:

(1.) He settled the Carta Mercatoria, whereby, the petty customs were granted; and this he did, not only by his charter of confirmation, but also procured it to be fettled by act of parliament, 27. E. 3.

(2.) He settled the staple of woolls and other staple commodities by act of parliament, visalen. E. 341 ft 2100 bergesse soul, without the Mallion Ilan

- (24) About the 39th year of his reign he reduced the custom of a demy, marke for 400 woollfells to be paid upon 240 woollfells.
 - (4.) He fettled by parliament in perpetuity the fubfidy of alnage 27. E. 34
 - (5.) In his time the first subsidy of tunnage and poundage was granted. (6.) He established a perpetual custom of 3d upon every fow of lead.
- (7.) He did first fett up the custom of cloth exported, viz. 14d. upon every cloth of denizens, and one-and-twenty pence upon every cloth of aliens; and this was fettled upon this ground, viz. that upon fo much wooll as would make fuch a cloth had it been exported by denizens undraped, it would have yielded fourteen pence for custome, and if exported by aliens undraped it would have yielded one-and-twenty pence, viz. a third part more. Thus it flood upon such an equality of reason, that though it were originally fett by way of imposition, yet it hath always continued ever fince, but with fuch advances, as shall be shewn; for though about a fourth or thereabout of a fack of wooll made a cloth, yet fourteen-pence, which: was near the fixth part of the custome of a fack of wooll, was the duty imposed upon it. And therefore it feems, that fir Edward Cooke in the comment upon the 36th chapter of Magna Carta bears somewhat too hard. against the legality of this duty upon cloth, for that the duty upon clothes was never imposed by an authority of parliament, but by the king and hiscouncill, as hath been shewn, as within the equity of the custome of woolls.: And that reason, that he gives, viz. that the alnage was given to the king

by the statute 27. E. 3. in lieu of his loss by the draping and exporting of cloth, is most certainly mistaken. For—1. That is a duty sett by parliament in relation to clothes not exported, but exposed to sale in the kingdom.—2. And plainly de fasso the truth was, that this imposition of sourteen-pence and one-and-twenty pence of clothes exported was sett in compensation of that loss, above sive years before the settling of the subsidy of alnage; and the very commission, that setts it, expressent the reason, quia magna pars lane pannisscatur. And so the great custome of wooll was not answered for the clothes so exported till this provision made of charging the cloth pro rata, which as I said was not by an act of parliament, as is supposed by the book and Dy. 165. but by an act of the king and his councill, as hath been shewn. It was indeed complained of in parliament, and prayed to be repealed, and denied by the king and the lords, but not enacted in parliament that I could ever find.

And hence it was, that in all the grants of the subsidies of tunnage and poundage from Edward the sourth's time downwards, clothes, as well as wooll woollfells and leather, was excepted out of the poundage. And the reason was, because it answered the custom of 14d. and 21d. And though in the acts of tunnage and poundage precedent to the time of E. 4. there be no exception of woollen clothes out of the subsidy of poundage, but only an exception of woolls woollfells and leather, yet in all probability they were discharged of poundage by writ or privy seal, as well as the Hans merchants aliens were discharged of paying their 12d. per cloth of these clothes after the 21d. was sett upon them, as appears by the record above cited of P. 35. E. 3. I will sett in the tenor of the writt there entered *.

Lawardus Dei gratia, &c. Thesaurario et baronibus de scaccario salutem. Cum nuper ad prosecutionem diversorum mercatorum de partibus Almanniæ ipsos nobis suggerentium, ipsos, de quolibet panno de lana in partibus transmarinis sacto et per ipsos intra regnum nostrum adducendo, custumas subscriptas, juxta sormam cartæ eisdem mercatoribus per dominum Edwardum quondam regem Angliæ avum nostrum concessa, et per nos consirmatæ, solvere consuevisse, viz. de quolibet panno in grano duos solidos, et de quolibet panno mixto cum grano decem et octo denar ac de quolibet panno sine grano 12d. et post modum pro eo quò dianæ insra regnum nostrum crescentes, et de quibus, si extra idem regnum nostrum ad partes exteras traductæ suissent,

[.] Ante p. 170 .- EDITOR.

[†] The copy of the following writ as in lord Hale's MS. I found to want many words. But through the favour of Mr. Chapman the copy here given is corrected from the record in the office of the Treasurer's Remembrancer at the Exchequer; namely, from the Communia Scaccarii of 53. E. 3.—EDITOR.

custuma et subsidium nodis solvi debuissent, in non modica quantitate pannorum infra idem regnum operatæ et panni hujusmodi ad partes exteras edutili suerunt, per nos et concilium nostrum ordinatum fuisset, quòd de singulis bujusmodi pannis infra regnum nofrum factis et extra idem regnum nostrum educendis 21d. per mercatores extraneos laco custumæ et subsidii prædictorum ad opus nostrum solventur; præfatosque mercatores distam custumam 2 1d. pro quolibet panno infra idem regnum nostrum facto et per ipsos ad partes exteras traducendo, juxta ordinacionem dieli concilii nostri ad opus nosrum solvere paratos suisse, ac collectores custumæ pannorum de land infra regnum nostrum factorum et extra idem regnum educendorum in portu London' ipsos mercatores pro custuma 12d. de singulis pannis per ipsos ad partes exteras edutendis ultra dictam custumam 21d. distrinxisse, in ipsorum mercatorum dampnum non medicum et depressionem manifestam, et nobis supplicantium sibi per nos remedium adbiberi, ac nos, advertentes non effe justum aut consonum rationi, quòd præfati mercatores de duplici custuma pro una et eadem re solvenda onerentur, præfatis collectoribus mandavimus, quòd, receptà à prædictis mercatoribus pro quolibet bujusmodi panno per ipsos extra idem regnum nostrum educendo dietà custuma 21d. demaundæ, quas eisdem mercatoribus pro dieta custuma 12d. pro bujusmodi panno ad opus nostrum solvend' facerent, supersederentur omnino; with a command to the barons to allow it to the collectors upon their accompt tefte 7 Febrii. 35. E. 3.

But although this privilege feems to be generall as to all merchants of Almaine, yet it was only enjoyed by the Hans merchants in after time, as will appear hereafter; for other merchants-aliens paid both the 12d. and the 21d.

In queen Mary's time the subsidy of wooll granted to her was 33s. 4d. over and above the old custom, which amounted to 6s. 8d. in all to 40s. of denizens. It was then observed, that 14d. for the custome of every short cloth did not countervaile the custome and subsidy of wooll; for it was then found, that four short broad clothes would be made only of a fack of wooll, and four times 14d, would amount only to 4s. 8d. whereas to ballance the fubfidy and custom of wooll, each cloth should have born ten shillings. It was thereupon thought fit to increase the custom of cloth, to make it bear some nearer proportion to the custome and subsidy of wooll, and yet for the encouragement of the manufacture. Wherefore, by decree of the lords of the councill annexed to the book of rates, Rot. Parl. 4. et 5. P. et M. parte 3. dorfo, and being under feal in the long house at Westminster, there was set upon every short cloth of denizens exported 6s. 8d. fo that brought up the duty of four cloths, which would take up a Vol. I. fack

fack of wooll to 26s. 8d. and upon every fhort cloth of aliens exported ten shillings.

This duty continued to be paid all the time of queen Mary and queen Elizabeth and king James, and ever fince, though not without some dif-

pute, as appears 1. Eliz. Dy. 165.

About the middle of king James, when the custom and subsidy of woolls amounted together to forty shillings upon the sack upon denizens, as formerly in queen Mary's time, it was found there wanted a mark in the duty upon short cloths to make the duty answer the custom and subsidy of a sack of wooll, viz. forty shillings; and thereupon that mark was sett upon four cloths, viz. three shillings and four-pence upon every cloth of denizens more than was in queen Mary's time; and that mark upon four cloths was called the pretermitted customes, and accordingly it was taken in king James his time, and not without great distaste.

The subsidies falling by the death of king James, no new subsidies of woolls or tunnage were granted in king Charles his time: but it was taken by way of imposition till about 16th of Charles, and then taken by the powers of the times; and from the 16th of Charles the pretermitted custom of cloth was omitted, and the custom of cloth answered according to queen Mary's constitution, viz. 6s. 8d. a cloth of denizens, and ten shillings of aliens. But upon the last settlement of the subsidy of tunnage and poundage granted to the king for his life, and by the book of rules then enacted, viz. 12. Car. 2. the duty of short cloths of denizens was reduced to 3s. 4d. the cloth, and that of aliens to 6s. 8d. viz. double the denizens; and so it stands settled by act of parliament. And a short cloth is 28 yards in length, weighing sixty-sour pounds. If it exceed, it pays pro ratā, viz. two farthings half farthing a pound weight, and abating after that rate in cloths that are shorter. Vide Book of Rates, page 227.

And thus we have the long narrative of the customes and subsidies during the long reign of king E. 3. and also the narrative of the progress of the customs of cloth; which, though consisting of divers intervals and vari-

ations, I thought good to put here together.

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A Lord Manyor S C . A to P. com X.

The state of the subsidies customs and impositions during the reign of Richard 2.

ING Edward the third began his reign the 25th of January 1623. He died the 20th of June in the 51st year of his reign, and his grand-child Richard the second succeeded him.

At the entry of R. 2. into his reign the customs and subsidies of goods exported and imported thus stood:

1. The great custom of woolls woollfells and leather settled, 3. E. 1. descended to him jure bereditario.

2. The petty customes of merchants-strangers settled by Carta Mercatoria descended to him jure bereditario.

3. The customes of cloth and worsteds began and settled 21. E. 3. descended unto him also jure bereditario.

4. The custome of three-pence on a sow of lead settled by the 27. E. 3. descended to him jure bereditario, as also the subsidy of almage settled by 27. E. 3.

5. Besides all this, the great subsidy of woolls woollfells and leather granted for three years 50. E. 3. had a continuance for two years to come at Michaelmas after the beginning of his reign.

In the first year therefore of his reign, though there were dismes and sifteenths granted, there was no subsidy of merchandize. But it appears by Rot. Parl. 2. R. 2. pars 1. n. 13. (which was held 15^{me}. Paschæ) that at a parliament of Gloucester there had been granted one mark upon a sack of wooll, and 6d. poundage upon other merchandize; and that is there released, and the old subsidy of woolls and leather is continued for one year from Michaelmas following.

A new parliament summoned and held 20 October 2. R. 2. The great substitution of the part of the part of hides exported, 43s. 4d. of every 240 woollfells exported, 4l. 6s. of every last of hides exported, to be paid by denizens and strangers, besides the old custom, for three years from Michaelmas next. There is also granted the same duties to be paid until Easter following. So they made a chasm or intervall between Easter and Michaelmas following, that it might not grow

to be a constant duty. They also farther granted 13s. 4d. upon every sack of wooll, 13s. 4d. upon every 240 woollfells, and 26s. 8d. upon every last of hides, besides the old customes and the subsidies abovementioned, to hold for one year from Easter next. They also granted 6d. for every 20s. of all merchandizes exported or imported, as well of foreigners as denizens, from the 16th of November till the 15th Michaelmas following.

Nota, hitherto no penalty imposed upon non-payment of these subsidies. The remedy for them was only by seizure or distress, not forfeiture of the

goods, or by information in the exchequer for the duty in specie.

At the parliament held Hill. 3. R. 2. viz. in Parl. Rot. n. 17. the former subsidies are all continued from Michaelmas next for one year.

At the parliament held 5 Nov. 4. R. 2. Rot. Parl. ibidem, n. 15, 16. the fubfidy of woolls woollfells and leather continued till Christmas, and thence to the feast of Saint Martin following.

At the parliament held *Crastino Animarum*, 5. R. 2. viz. n. 40. the subsidy of woolls woollfells and leather continued from the feast of the Circumcision till Candlemas, and a chasse or interposition of time discharged of subsidy left purposely, lest by the continuation of the same the king might claim it in time as his right.

At the parliament held after in the same year two shillings per ton and fixpence per libram granted from Michaelmas next for two years, stat. 5. R. 2.

C. 4.

At the parliament held 26 Ottobris, 7. R. 2. viz. ibidem, pars 1. n. 35. the subsidy of two shillings upon every ton of wine and 6d. upon the pound granted untill Michaelmas next, with express provision, that it be paid out to the admirall for the guard of the seas and conduct of merchants between Michaelmas Mount and the Tweed. And vide ibidem, n. 36. a complaint of the neglect of that guard; and ibidem, n. 35. an imposition of 19d. upon a sack of wooll beyond the custom and subsidy, and discharged as to denizens.

The subsidy of woolls was continued till the seast of Saint John Baptist, 9. R. 2. although the continuance thereof seems not to be at all expressed upon the tolls of 7. and 8. R. 2. But at the parliament die Veneris post festum Santis Luca, 9. R. 2. Rot. Parl. n. 11. provision is made, that it cease assume festum Santis Petri ad vincula tunc prox' sequens, ad effestum, ne subsidium bujusmedi, quod en libera et spontanea concessone dominorum et communitatis procedit, si forte continuaretur absque interruptione, de jure vel consuetudine vindicari valcat vel clamari, und the subsidy of woolls and woollsells, viz. 42s. 4d.

ultra antiquam custumam de denizens et 46s. 1d. de aliens, and of woolls and woollsells in like proportion, continued from St. Peter ad vincula for one year.

At the parliament held rst October, 10. R. 2. viz. n. 18. a subsidy of 3s. of every ton of wine, and 12d. for every twenty shillings of merchandize exported or imported, except woolls woollfells leather and wines, as well of foreigners as subjects, notwithstanding any exemption to them granted. The subsidy also of woolls woollfells and leather is continued from the feast of St. Peter ad vincula to the feast of St. Edmond, and thence to the 1st of January then next, if no parliament be held in the mean time.—This is the first time that the custom of poundage was raised from fix-pence to twelve-pence.

Rot. Parl. 11. R. 2. n. 16. a grant of a substidy of 43s. 4d. of every fack of wooll and every 240 woollstells of denizens, and of aliens 46s. 8d. above the ancient custom, from the 23d May last to the 24th June, and thence for a year; and the former substidy of tunnage and poundage continued for the same time.

At the parliament held Monday post festum Sansti Hill. anno 13. R. 2. viz. n. 20. there is granted from the first of March until the first of January, of every sack of wooll and of 240 woollfells of denizens 33s. 4d. of aliens 36s. 8d. beyond the ancient custome; and of every last of hides five marks of denizens, and five marks and a half of aliens, besides the ancient custom; and three shillings for every tun of wine imported, and 12d. poundage of all merchandizes imported and exported, except woolls woollfells seather, and except victualls clothes and harness, brought to Berwick, Roxborough, and Goddesworth, for their furniture; the rates of poundage to be as it cost the merchant at the first buying.—Nota: no book of rates then, and this the first direction, how the goods should be valued.

At the parliament held Grafino Martini, 14. R. 2. viz. v. 16. there is granted for three years from the feast of St. Andrew last past, of every sack of woods and every 240 woodsels 43s. 4d. of denizens, and 46s. 8d. of aliens, besides the ancient custom; and of every last of hides fix marks 6s. 8d. of denizens, and seven marks of aliens, besides the ancient customes; and three shillings of every tunn of wine imported, and 12d. per pound of all merchandize exported or imported, as well of denizens as of strangers, notwithstanding any privilege.

At the parliament held Octavis Hill. 16. R. 2. Rot. Parl. n. 11. the same subsidies of wooll woollfells leather tunnage and poundage continued for three years from the seast of St. Andrew next.

At the parliament held Monday in the feast of St. Vincent, 20. R. 2. viz. Rot. Parl. n. 18. the subsidy of tunnage and poundage continued from the feast of St. Andrew 20. R. 2. for three years, and the subsidy of woolls

woollfells and leather continued from the faid feaft for five years.

These are all the subsidies of goods imported or exported that I can observe in the reign of this king. As to the customes, he continued them as he found them lest by his grandfather, without any considerable alterations or impositions. Only there grew up in his time, a certain tax for woolls woollfells and leather exported called the devoires of Bolyes, which was 8d. upon a sack of wooll, and 16d. upon a last of hides; and this was also transferred upon cloth upon the reason beforementioned, and was paid rateably for all clothes and worsteds. Also only by a special provision by act of parliament, Rot. Parl. 16. R. 2. n. 42. single kerseys were discharged of that duty; for so it became now, being for a long time quietly paid.

And thus much for the time of Richard the second.

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Concerning the state of the customes subsidies and imposts of goods exported and imported in the time of H. 4.

RICHARD the fecond having reigned two-and-twenty years three months and fifteen days, was deposed, and Henry the fourth usurped the crown before the expiration of the period of the subsidies abovementioned granted the 20. R. 2. viz. 30th Sept.

There was a fubfidy of woolls woollfells and leather granted in his first parliament for three years from Michaelmas last, viz. of denizens 50s. of aliens 60, upon a fack of wooll.

But in his fecond parliament, begun 20 January 2. H. 4. viz. ibidem, n. 9. there was granted to him two shillings of every tun of wine, and eight-pence in the pound of every manner of merchandize imported or exported, except corn, flour, fish, and rees, &c. from Easter next for two years, and a penalty of double custome upon the merchant making default of payment.—This was the first penalty that I find annexed to the non-payment of the subsidies of this kind.

His next parliament was held the last of September, 4. H. 4. At that parliament, Rot. Parl. n. 28. there is granted for three years from Michaelmas

Michaelmas last, of every fack of wooll and every 240 woollfells 50s. of denizens, 60s. of aliens; of every last of hides 51. of denizens, and 51. 6s. 8d. of strangers.

Nota: it is not faid in the grant ultra antiquas custumas.

There is likewise granted from the third of April following to Michaelmas next, and from thence for two years, three shillings of every tun of wine imported, except the king's prisage, and twelve-pence for poundage of goods imported, except woolls woollfells leather corn bear, &c. and that the merchants making default of payment, that they forfeit the moiety of their merchandizes without other damage.

Here the former penalty is altered.

At the parliament 6 October 6. H. 4. viz. n. 9. there is granted, among other subsidies, for two years from Michaelmas next, of every sack of wooll and every 240 woollfells 43s. 4d. of denizens, and 53s. 4d. of aliens; of every last of hides 5l. of denizens, and 5l. 6s. 8d. of aliens. The same tunnage and poundage as in the former grant, with the same exceptions, but the penalty of concealment omitted.

At the parliament held the 22d December 8. H. 4. viz. n. 9. there is granted the former substidy of woolls woollsells and leather, from Michaelmas next for one year, and likewise the same substidy of tunnage and poundage for the same term, but no penalty upon the merchant making default of payment. And there is a large capitulation between the king and the merchants, that they shall guard the seas for that substidy of tonnage and poundage. And ibidem, n. 50. there is mention made of a concurrent grant of the like substidy of tonnage and poundage, charging aliens, except the Hans merchants, granted in a parliament held 7. H. 4.

At the same parliament held 20th October 9. H. 4. viz. n. 26. the same subsidy of woolls woollfells and leather, and tonnage and poundage, with the exception as before and of bestaile, is granted for two years from Michaelmas next.

At the parliament held the 15me. Hill. 11. H. 4. * there is granted for two years from Michaelmas next, the same subsidy of tonnage and poundage, with the same exceptions, and of denizens 43s. 4d. upon a sack of wooll, and 43s. 4d. upon 240 woollfells, and 5l. upon a last of hides exported; and of aliens 50s. of a sack of wooll, 50s. of 240 woollfells, and 5l. 6s. 8d. of a last of hides.

At his last parliament held Crastino Animarum, 13. H. 4. ibidem, n. 10. there is granted for one year from Michaelmas next, of denizens for every

fack of wooll and every 240 woollfells 43s. 4d. of every last of hides 51. of aliens of every fack of wooll 53s. 4d. of every 240 woollfells 53s. 4d. of every last of hides 51. 6s. 8d. And also there is granted, 3s. a tunn of all wines exported or imported, and 12d. per pound of all merchandize imported or exported, except as before. Quere for the time?*

And thus ends the subsidies of H. 4. in whose time I find no complaint of any imposition set on merchandizes; and it concerned him to be just to the people.—In these subsidies upon woolls woollfells and leather, it is not faid ultra antiquas custumas.

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C A P. XII.

Concerning the customes and subsidies of merchandises in the time of H. 5.

ING Henry the fourth having reigned thirteen years fix months and four days, dyed 20 Martii 1412. Henry the fifth his son succeeded him, and summoned and held a parliament which began 15 May 1. H. 5. and in Rat. Parl. n: 17. there is granted for sour years from Michaelmas next, of denizens 43s. 4d. of every sack of wooll and of every 240 woollfells, and 5l. of every last of hides; of aliens 50s. for every sack of wool and every 240 woollfells, and 5l. 6s. 8d. of every last of hides exported. Nota: it is not faid ultra antiquas cusumas. There is likewise granted until Michaelmas next, and for one year next after, 3s. upon every tun of wine imported or exported, except prisage of wine; and 12d. per pound of goods exported or imported, except woolls woollfells leather corn flour fish rees bestaile imported, and except ale exported for victualling of Calais, &c. The rate of poundage to be according as it cost the merchant, and that their oaths and letters be credited therein. Defaulters in payment to pay double sub-fidy without forseiture of goods.

At the same parliament of Hen. 5. the commons, in hopes of being discharged from such subsidies and tonnage and poundage for the time to come, further granted a whole tenth and a whole sisteenth+

^{*} It appears by the printed roll of parliament, that the grant of the commons limits a time for the subsidy of woolls, but is filent as to the duration of the duty on wine and poundage on merchandize; and thence grows Lord Hale's question. 3. Rot. Parl. 638.—EDITOR.

⁺ This paragraph I have partly supplied from the printed roll of parliament, the passage in Lord Hale's manuscript being here impersect—EDITOR.

But at the next parliament held ultimo Aprilis, 2. H. 5. viz. n. 7. the former subsidy of tonnage and poundage continued from Michaelmas next for three years in the same manner as the last grant was.

At the parliament held die Lune prox' post festum Omnium Sanctorum anno 3. H. 5. viz. pars 2. there is granted to the king from Michaelmas next for his life, of denizens 43s. 4d. upon every fack of wooll and every 240 woollfells, and 5l. of every last of hides exported; of aliens 60s. upon every fack of wooll and every 240 woollfells, and 5l. 6s. 4d. of every last of hides exported; and likewise the subsidy of tonnage and poundage, with the same exceptions and remedy as before, with a proviso not to be drawn in example.—This is the first time these subsidies were granted for life.

And now for the ensuing time of this king I find no more grants of subsidies upon merchandize; but his supplies were for the future by tenths and fifteenths, as there was occasion.

I find no complaint of any impositions in this king's time.

C A P. XIII.

Concerning the customes and subsidies of merchandize in the time of Henry 6.

IIENRY the fifth dying 31 August 1422, his fon Henry 6. an infant succeeded him.

His first parliament was held die Lune ante festum Santti Martini, 1. H. 6.

At that parliament, viz. n. 19. there is granted of all goods shipped from the first of September, and so forward for two years after the commencement of the parliament, of denizens 33s. 4d. of every sack of wooll and every 240 woollfells, to be paid by moieties at the end of six months after the date of the cocquett; of aliens 53s. 4d. of every sack of wooll and of every 240 woollfells; and likewise the subsidy of tonnage and poundage according to the former proportions, but nothing of leather. Provision, that if woolls shipped by English be lost at the sea, the custom should be discharged; or, if paid, to ship out as much custom free.

At the parliament held 20 October, 2. H. 6. viz. n. 14. there is granted the last day of that parliament, (viz. the 28 Feb. and so mentioned upon the roll) for two years from Saint Martin's day next, the like Vol. I.

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subsidy of wooll and woollfells of merchants English as before, and of aliens 43s. 4d. of every sack of wooll and 240 woollfells to be shipped within that time, and the like subsidy of tunnage and poundage.

At the parliament held ultimo Aprilis, 3. H. 6. viz. n. 17. the subsidy of woolls for merchants English, and also the tunnage and poundage of merchants English, continued from the feast of Saint Martin 1426 for three years, under the like provisions for losses and forfeitures of double custome, as before. Merchants-strangers excused, because they were to be put under hoost within sifteen days after their coming, and to sell all their merchandize within forty days after their coming under hoost.

At the parliament 18 Feb. 4. H. 6. viz. n. 24. there is granted from Saint Martin's day 1429 for two years, of English 33s. 4d. of every sack of wooll and every 240 woollfells, of aliens for the like 43s. 4d. and the subsidy of three shillings per tunn and twelve-pence for every twenty shillings of aliens for the two years aforesaid, and of denizens from St. Martin's next for one year, with the like provisions for losses, and an exception of woolls woollfells and all manner of woollen cloth out of the subsidy of poundage.—And here came first in the exception of woollen cloth out of the subsidy of poundage, because charged, as we have shewn, with another custome imposed; and it was always after this exception continued; for though probably it paid not poundage before, yet this exception is put in to make it clear.

At the parliament in quindena Michaelis, 6. H. 6. viz. n. 13. the subsidy of tunnage and poundage of merchants-denizens granted for one year from the feast of Saint Ambrose next.

At the parliament held 22 Sept. 8. H. 6. there is granted, from the feaft of St. Michael to the next parliament, three shillings of every tunn of wine imported, and twelve-pence for every twenty shillings of other merchandize imported or exported by denizens, except woolls woollfells hides and wheat *.

At the parliament held die Veneris ante festum Hillarii, 9. H. 6. viz. 14. there is granted until the feast of Saint Martin, and from thence for a year, of every tun of wine imported three shillings, and of every tun of sweet wine imported by aliens three shillings more; and twelve-pence for every twenty shillings value of goods imported or exported by denizens, and six-pence more of aliens; and from the feast of Saint Martin 1434 for

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one year five nobles upon every fack of wooll.—Provision for goods taken by enemies or perished at sea.

At the parliament held 12 May, 10, H. 6. the same subsidies of woolls tunnage and poundage continued for one year from the feast of Saint Martin 1434*.

At the parliament held 8 July, 11. H. 6. viz. n. 21. there is granted, of all woollen cloth of any denizen exported in any carrick from the feast of the Conception to the feast of Hillary; and for woollen cloth of denizens exported, from the feast of Hillary to the feast of Saint Martin's, twelve-pence of every twenty shillings value; of all merchandizes exported or imported by denizens, from the feast of Saint Martin next for two years, twelve-pence for every twenty shillings, except woolls woollfells wine fresh sish, &c. of every ton of wine exported or imported of every denizen and alien three shillings; and of every tun of sweet wine imported by aliens, from the feast of Saint Martin for three years, three shillings over the rate of tunnage before granted; and of every sack of wooll of aliens exported during that time 53s. 4d.—This is the first subsidy granted of cloth that I find except alnage.

At the parliament held 10 Oct. 14. H. 6. viz. n. 14. there was a grant of five nobles of denizens, seven nobles of aliens, for a sack of wooll untill the feast of Saint Martin 1437; of every tun of sweet wines 6s. of other wines 3s. imported by merchants-aliens, from the feast of Saint Martin 1437 for a year; 12d. for every 20s. of merchandizes imported by aliens, from the feast of Saint Martin 1436 for a year.

At the parliament held the 21 Jan. 15. H. 6. viz. n. 29. there is granted for three years, from the feast of Saint Martin next, for every fack of wooll or 240 woollfells exported by denizens 33s. by aliens 53s. 4d. three shillings per tun of all wines, and six shillings per tun of aliens importing sweet wines, for three years from the first of April; and 12d. for every 20s. of other merchandize, except woolls and woollfells, and except woollen cloth of denizens.

At the parliament Crastino Martini, 18. H. 6. viz. n. 13. the former subsidies continued for three years longer.

At the parliament in die Conversionis Pauli, 20. H. 6. viz. n. 6. et sequentibus, the former subsidies continued for two years; woollen cloth

* Rot. Parl. vol. 1. p. 389. - EDITOR.

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of denizens excepted out of the poundage; and the value of the merchandize to be rated by the oath of the merchant or his factor's letters.

At the parliament held 5 Feb. 23. H. 6. viz. n. 16. the former subsidies continued for fur years.

At the parliament held 12 Feb. 27. H. 6. viz. n. 9. there was granted for five years 12d. for merchandize imported or exported by denizens or aliens, (the Hanse merchants not excepted) except woollen cloth of denizens, &c. and three shillings per tun of wines imported by denizens or aliens charged moreover, and three shillings more per tun for sweet wines imported by aliens, and the Hanse merchants charged as well as others. Et ibidem, n. 15. a subsidy of thirteen shillings and four-pence of every sack of wooll of Cumberland and Westmoreland exported, and 33s. 4d. of other woolls, for four years from the feast of Saint Martin next: a forfeiture of the woolls shipped uncustomed; and provision for discharges in case of losses at sea.

At the parliament held 6 Martii 31. H. 6. viz. n. 8. there is granted to

the king for his life from the third of April 1454,

1. Poundage of denizens strangers and Almaines, viz. 12d. for every 20s. value; but for tynne strangers to pay two shillings, the valuation as it cost at the first buying, the oath and letters of the merchant to conclude; except wooll woollfells hides wine, and except corn flour fresh fish and bestayl imported, and victuals exported for Calais.

2. Tunnage, viz. three shillings a tun of wine imported by alien denizen or Hanse, and three shillings more for sweet wines imported by

aliens. Penalty of concealers double customs.

3. Of denizens 43s. 4d. for every fack of wooll or 240 woollfells, and 5l. for a last of hides.

4. Of aliens 51. of every fack of wooll or 240 woollfells, and 51. 6s. 8d.

for a last of hides.

This is the highest subsidy upon aliens for woolls; and the Hanse merchants, notwithstanding their privilege, were included.

In Rot. Parl. 33. H. 6. z. 71. the commons found themselves pinched with this act, principally in two things, viz.

1. That the fubfidy of woolls was too high upon denizens, viz. higher

by ten shillings than it had been in this king's time.

2. That there was no exception of English woollen cloth out of the subsidy of poundage, which was a great discouragement to the manufacture.

Thereupon

Thereupon the king discharged the English of ten shillings, part of their subsidy of woolls exported to the staple of Calais or Straights of Morocco, for five years; and that every merchant denizen be discharged of the poundage of woollen clothes by them exported by the space of sive years.

And this brings these duties to the end of this king's reign; in all whose reign I find no complaint of any impositions laid here in England. But some are complained of, which were laid in France or Acquitaine in his foreign dominions; as namely, Rot. Parl. 8. H. 6. n. 29. of 12d. per libram set by H. 5. for relief of Burdeux, which is there repealed; Rot. Parl. 15. H. 6. of 4d. per lib. for the relief of Bayon, continued Rot. Parl. 23. H. 6. n. 45. &c. against taxes in Acquitaine upon wines; 28. H. 6. Rot. Parl. n. 51. the like; and ibidem, n. 54. some exertions made by searchers and waterbailiss, which are there remedied by act of parliament.

And thus we have done with the reign of king Henry the fixth. And being beaten by king Edward the fourth, he lost his crown 3 Martii 1460, when he had reigned thirty-eight years fix months and three days; and Edward earl of March, the right heir to the crown, took upon him the government. The progress of customes and subsidies in his time, and in the time of some of his successors, will be the business of the next chapter.

C A P. XIV.

Concerning the customes and subsidies of merchandize in the times of E. A. and R. 3. H. 7. H. 8. and E. 6.

A T the parliament held 4 Nov. 1. E. 4. there was no subsidy granted, as I can find; but the business of the parliament was to settle the kingdom upon the late great revolution. And yet it appears by the rolls of 1: 2. and 3. E. 4. that these subsidies were answered. It may be there might be some grant, though it appear not upon the parliament roll of 1. E. 4.

But in the parliament held 20 April 3. E. 4. a fubfidy of tunnage and poundage was granted to the king during his life; viz.

Three shillings of every tun of wine imported, and three shillings more of every tun of sweet wine imported by merchants aliens, as well those of the Hanse as others.

Twelve-

Twelve-pence for every twenty shillings of all merchandizes exported or imported by subjects or aliens, except tynne.

Two shillings for every twenty shillings value of tynne of merchants

strangers, and twelve-pence of denizens.

Except out of the fubfidy of poundage, woolls woollfells and leather exported, and except corn flour and all woollen cloth made hereby English, all fresh fish, bestayl, and wine.

The value to be rated by the merchants oath or their factors letters

as they cost at the first buying.

I cannot yet find the act itself; but it is recited in the statute of 12. E. 4. c. 3. whereby provision is made, that, whereas by the act of 3. E. 4. the penalty of concealing of customes is only payment of double customes, now the penalty is the forfeiture of the merchandize inward exposed to sale before subsidy paid, and of the merchandize outward if shipped the custom not paid or collector agreed with.

Yet in all the intervall between the beginning of E. 4. till this grant

the duty was received, possibly by way of mandate or imposition.

As to the time of R. 3. I do not remember any grant of this subsidy, yet I think it was granted to him for his life 1. R. 3.—He raised his revenues upon woolls and woollfells by licences to transport them to other places besides Calais 1. H. 7. 4.

Neither have I seen any grant thereof in the times of H. 7. or H. 8. though it be certain there were grants thereof made to these princes in the first years of their reigns. This appears fully as to the time of H. 8. by the statute of 6. H. 8. cap. 14. whereby the statute 12. E. 4. is continued in force during the king's life.

As to the time of E. 6. he began his reign 28 January 1547. His first

parliament was held 4 November 1, E. 6. . it is marrillung pip

By the statute 1. E. 6. cap. 13. the former subsidy of tonnage, with the addition of 12d. upon every tun of Rhenish wine, and the same subsidy of poundage, with an addition of 12d. for tynn, and with the same exceptions of woolls woollen cloth, &c. as hefore, and also 33s. upon every sack of wooll or 240 woollfells, and 3l. 6s. 8d. upon every last of hides exported by denizens, and 3l. 6s. 8d. of every sack of wooll or 240 woollfells, and 3l. 13s. 4d. of every last of hides exported by aliens, are granted to the king for his life from the first day of his reign. A sorfeiture of merchandize, where the custom concealed, but the penalty to take place from the first Martii next. Provision for merchandize lost, and a provision for the Hans merchants of the Stillyard.

And thus much shall serve for the narrative of these kings time.

fition

C A P. XV.

Concerning subsidies customes and impositions upon merchandize in the times of queen Mary, queen Elizabeth, and king James.

I COME to the time of queen Mary. She began her reign 5th July 1553. By the statute of 1. Mary, session 2. cap. 18. which began by prorogation 24 Octobris, the subsidy of woolls woollfells and leather, with tunnage and poundage, is granted to her for her life, from the first day of her reign, viz.

Tonnage :

Of every tunn of wine coming into the realm by way of merchandize, three shillings, and so after that rate.

Of every tun of sweet wines coming in ut supra by merchants aliens, as well of Hans as others, the farther sum of three shillings; and so after that rate over and above the 3s. afore granted.

Of every tunn of Rhenish wine imported 12d.

Poundage:

Of every twenty shillings value of merchandise imported or exported by way of merchandize 12d.

Of every twenty shillings value of tynne exported by merchants aliens 12d. more.

Woolls, &c. viz.

Of every fack or 240 woollfells of denizens born 33s. 4d. of aliens though made denizens 31. 6s. 8d.

Of every last of hides of denizens born 31. 6s. 8d. of aliens born 31. 13s. 4d. and so after that rate.

Merchandizes imported after the first of January next and laid on land, or goods to be exported laid on shipboard after that time, the subsidy not paid or collector agreed with, all forfeited. Provision for goods perishing at sea after custome paid to reship the like quantity free from subsidy. Englishmen shipping any goods in a carrick or galley to pay aliens customes.

Some things are seasonable to be observed on this act, which will be relative to all the subsidies of this nature that follow, and to those that go before as to some purposes, viz.

1. Although the custom of woolls, &c. be not said ultra custumas antiques, but generally, yet it is so intended, and was so practised; for custome and subsidy came to 40s. of denizens, as will appear by the impo-

fition hereafter fet upon cloth, which appears to be rated upon a supposition that both the subsidy and custome of woolls were due.

- 2. Merchants aliens made denizens rated to the subsidy as aliens, which is but pursuant to former laws.
- 3. The Hanse merchants pay their subsidies as other aliens, notwith-standing their privileges; which though in some former acts they are saved, yet here and in some others they are derogated.
- 4. The commencing of the duty outwards by exportation, inwards by importation, by way of merchandize.
- 5. The penalty or remedy: a forfeiture of goods exported if shipped, of goods imported if landed or unshipped to be laid on land, the custome not paid or collector agreed with.

These and many other observables touching these kinds of duties will be more particularly observed.

6. The estimate of the rate of merchandize not lest to the merchants oath or advices, but generally.—And the reason was, because at the time of this subsidy granted, it was in design and prospect to set a public estimate or book of rates of merchandizes, according to which they were to pay poundage; which was accordingly done, being the first time of the making of a book of rates; according to which rates poundage was paid all the time of queen Mary and queen Elizabeth, and until 2. James, as appears by the recital of the letters under the privy signet of king James 26 November, 2. James, for the setting of a new book of rates. This book of queen Mary was delivered into the exchequer under the great seal and sign manuall, to be the rule of those payments, where it still lodgeth. If any merchandizes were omitted out of the book of rates, as many were, they paid poundage ad valorem according to the reasonable estimate between the merchant and the customer.

Thus much concerning the subsidies in the time of queen Mary.

As touching the customes both great and small, they stood as they were in the times of former kings. Only as to cloth, as is before observed, whereas the custome imposed thereupon by king Edward the third was 14d. upon every short cloth of denizens and 21d. upon aliens, which allowing four such cloths to a sack of wooll arose to 4s. 8d. upon denizens, and 7s. upon aliens; by decree of council 4. et 5. P. and M. Rot. Parl. parte 3. dorso, the custome of a short cloth upon denizens was sett to six shillings and eight-pence, and upon aliens to 13s. 4d. viz. double to denizens. Wherein though the sack of wooll, which made four cloths, yielded 33s. 4d.

upon denizens, and three pounds upon aliens, besides the customes; yet this custome upon cloths did not answer the proportion of the subsidy and custom of the sack; for it came but to 26s. 8d. of denizens, whereas the subsidy and custome of a sack came to 40s, and of aliens to 58s, whereas their subsidy of a sack came to sour pounds.

And there was a reduction likewise of other cloths, as streits kerseys, &c. to the proportionable subsidy of broad cloths.

This though it were complained of as an imposition 1. Eliz. Dy. 165. yet it continued during the times of all her successors, as appears by the book of rates set forth in 2. Jac. and the warrant for the same 26 Nov. 2. James; and the reason was, because it seemed to be warranted at least by the equity of the old custome of woodls; for cloth exported was yet so much wooll exported, though turned into a manufacture, and therefore it retained the name of custome and not of imposition.

The queen, also, after a long intermission of impositions by her predeces. fors, did fet an imposition of 40s. a tun upon French wine imported; which in truth was not fo-much an imposition as a bargain for a dispensation: for in the fifth year of her reign, the iffued a proclamation prohibiting the importation of French wines, and immediately after made an order of council that any might import paying 40s. per tunn by the name of impost. But this did not create a duty, neither indeed could; and therefore Parl. 1. Eliz. in the king's remembrancer's office there was an information against Germane Ciol for not paying that imposition for wine imported. He pleads a lycence 1, 2. Mary to import French wines for a certain time, notwithstanding any restraint made or to be made, provided that the customes subfidies and other duties due and accustomed to be paid to the king and queen were duly satisfied. He avers, that he paid for these wines three shillings for every tun, being all that was due and accustomed to be paid. (Nota: the importation was after the imposition of forty shillings sett.) It was hereupon demurred, and judgment for the defendant. But possibly this judgment might be upon some matter by the by.

She also laid an imposition upon all French commodities; and it continued to be taken for some time in the first year of queen Elizabeth, but then was discontinued.

And thus much shall suffice for the time of queen Mary.

Touching the time of queen Elizabeth, who began her reign November 17, 1558, by the statute of 1. Eliz. cap. 19. in the parliament which began 23 January 1. Eliz. the subsidy of tunnage and poundage woolls woollfells Vol. I.

and leather is granted to queen Elizabeth during her life, from the 16 Nov. last, with the same exceptions provisions and penalties as in the act of the grant thereof to queen Mary. Whether she continued the custom of cloth in the same manner as queen Mary lest, I find not in any memorials of impositions in her time: yet some there were. She collected the subsidies according to the book of rates settled by queen Mary.

I come to the time of king James, who began his reign 24 March,

1603

By the statute of 1. Jac. cap. 33. the subsidy of tunnage and poundage woolls and woollfells was granted to king James during his life, from 18th March last, in the same proportion and sums and with the same exceptions penalties, &c. as they were granted to queen Elizabeth and queen Mary, with a farther exemption of herrings and sea-fish from custome.

26 November, 2. Jac. the king by his letters under his privy feal did fettle 2 new book of rates, which was printed with that letter, and conti-

nued the custom of cloth as it was sett by queen Mary.

After this in the year of his reign the king to improve his revenues began to fett impositions beyond the subsidy granted. He began with currants.

Bates a merchant refusing to pay this imposition, an information was exhibited against him in the exchequer for the contempt. And Mich.

4. Jac. judgment was given by the then barons for the king *.

Way now being made by this judgment, the king, by his letters patent under his great feal with a book of rates annext, bearing date 28 July, 6, Jac. doth not only fettle the rates of merchandizes, but also almost upon all merchandizes setts an impost or imposition besides the custom and subsidy settled by act of parliament; as for instance, the subsidy of Gascoigne wine imported by denizens was 3s. the impost was 42s. and 15s. so the whole duty 31. &c.

Much contest there was against these impositions and against the judgment in Bates's case in severall parliaments, as may be seen in the collections of Sir Edward Cooke upon the 30th chapter of Magna Charta +. But whatever the law was, yet the reason of state to make a ballance between the trades here and beyond seas, and diverse other matters, prevailed; and these

imposts were taken all the life-time of king James.

^{*} In the new edition of the State Trials there is an account of Bates's case and of the proceedings upon it. See vol. xi. page 29.—EDITOR.

^{† 2.} Inft. 58 .- EDITOR.

And besides this, about the middle of king James, although by the warrant and book of rates 2. and 6. Jac. the custom of cloth was taken as it was in queen Mary's days, and so directed, yet some inquisitive customers found that that custome so sett in queen Mary's time, viz. 6s. 8d. upon a short cloth of denizens, did not countervaile the custome and subsidy of a sack of wooll, which of denizens was 33s. 4d. subsidy and 6s. 8d. custome, in toto 40s. for one sack would make four clothes, which at 6s. 8d. per cloth amounted to 26s. 8d. of denizens. And therefore there was 3s. 4d. added to the custome of sour short clothes, viz. in toto 10s. the cloth, which ballanced the subsidy and custome of a sack of wooll of denizens. And the like proportion was taken upon cloth exported by aliens to ballance their subsidy and custome of wooll, viz. 4l. And these were called pretermitted customes, and were sometimes exacted, but complained of in parliament, and so intermitted.

In 12. Jac. Swinerton, being farmer of the custome of wines, there grew some difference between the farmer and merchant touching some reasonable allowance to be made for leakage of wines, because wines, especially Spanish, partly by accident and partly by their own nature, would waste at sea; and it was not possible without much inconveniency to fill up their vessells, for it may be they had not wines of their own of the kind; neither was it reasonable to pay full tunnage, where possibly the vessell might be half empty; and besides, it would be troublesome to gauge every vessell. They came therefore to this agreement, that the merchant should not fill up in the port, but should have an allowance of twelve pound per cent. for leakage out of his customs and impost; and this was settled by order of the council 12. Jac.

And this is as much as I shall speak concerning the time of king James.

King Charles the first succeeding him, there grew differences between him and his houses of parliament in 1. and 3. Car. so that there was no subsidy of tunnage and poundage granted to him. Only he had the great customes of woolls woollfells and leather, which was infignificant in respect of the inhibition of exportation of those commodities. He had also the petty customes of aliens and that of cloth. But these were not sufficient to support the charge and dignity of his majesty.

He therefore for his great necessity turned what was received by his father by way of subsidy and impost into one great impost; and accordingly the same was collected by the king's farmers from the first till the 16. Car. at which time the long parliament of 16. Car. began *.

* See 9. Parl. Hift. 310. 327. 339.- EDITOR.

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The farmers of these impositions in the parliament of 16. Car. are called to an account for receiving of these impositions without authority of parliament; and they and their partners, to avoid the severity of the house, made a composition in nature of a fine of for their peace, which was accordingly paid.

The subsidy of tunnage and poundage was granted to the king in 16. and 17. Car. for some small time +; but the difference broke out between the king and his houses of parliament, before they were settled upon him for his life.

Nevertheless the bill was prepared for that purpose, wherein the right also of the subject against impositions, and a particular enumeration of those duties upon merchandize, which do of right belong to the crown. But this bill passed not the king's consent.

During the time of the late troubles, these were taken sometimes by way of loan or advance, then by ordinances of both houses, then by the temporary edicts of those that de fasto obtained the power during the king's life, and after his death until the return of his now majesty in the 12th year of his reign, whereof in the next chapter.

The proceedings on this composition may be traced by consulting the Journals of the Commons in the places referred to under the head of Customers in the Index to the 2d volume : and by them it appears, that a composition of 150,000l. was agreed upon; but it is not quite clear, whether this was a sum for the whole body of farmers of the customs, or only a part of them.— EDUTOR.

+ The act granting this fubfidy of tonnage and poundage is not in print. But lord Clarendon gives part of the preamble, according to which it contained the fullest disayowal of the claim of the crown to tax at the ports. 1. Clarend. Hist. 8ve. ed. 264. The king's speech on giving his assent to the act confirms this; his words being, " In this particular bill "I hope you will know, that I do freely and frankly give over the right which my predecessors have ever challenged unto them, though I confess disputed; but yet they did never yield. "itin their times." Rufhw. part 3. vol. 1. page 297. g. Parl. Hift. 384:- Upon a further fearch I find a short statement of the act in Rushworth. From this it appears, that the act recited it to be the antient right of the subjects of this realm to have no subsidy custom impost or charge laid upon merchandize exported or imported by denizens or aliens, without confent of parliament. But the act did not stop here; for it made receiving any duty not warranted by grant in parliament highly penal; the act containing a provision, that if any person should take or receive any imposition laid on merchandize except by grant in parliament, he bould incur the forfeitures provided by the statute of Promunire of the 16, R. 2. See Rush. vol. 2. of 2d part 1382. Other statutes have condemned the practice of levying taxes on the subject without grant in parliament in very refentful terms. Thus the statute of 34. E. r. de tallagio non concedendo concludes with a direction, that the archbishops and bishops should for ever read that statute in their cathedrals twice a-year, and denounce accursed all infringers of it. But this act of Charles I believe was the first instance of a fixed penalty. interrorem against the mere receivers of an unlawful tax : nor on the Restoration was it deemed necessary to adopt an example of such extremity; simply declaring what is the constirutional mode of taxation being then thought very adequate to guard against future encroachments .- EDITOR.

C A P. XVI.

Concerning the subsidies and customes as they now stand in the time of king Charles 2,

BY the act of parliament 12. Car. 2^{di}. c. 4. the subsidy of tunnage and poundage, &c. is granted to the king for his life under some difference of rates than formerly, viz.

As to tunnage:

Of French wines imported into London and the members thereof by . way of merchandize, by natural-born subjects 41. 10s. per tun, by strangers 61. per tun.

Of French wine imported into other ports, by natural-born subjects

Of sweet wines imported into London, by natural-born subjects 45s. per butt, by aliens 31. per butt.

Of every sweet wine imported into other ports, by natural-born subjects 30s. per butt, by aliens 45s. per butt.

Of every awm of Rhenish wine imported by natural-born subjects 20s. by aliens 25s.

An additional duty

Of French, Spanish, Portugueze, German, and Madeira wines, 31.

Of other wine 41. to be paid in nine months.

A fubfidy of poundage, viz.

12d. of every 20s. value of merchandize exported or imported by way of merchandize.

Of English commodities or manufactures exported by aliens 12d. more of every 20s. except woollen cloth wrought in England called old draperies, wines, fish taken by English, fresh-fish, bestiall.

Of every short woollen cloth called broad cloth exported by natural subjects not exceeding 28 yards 35.4d. if exceeding it pro rata, if shorter pro rata, and exported by strangers 65.8d.

A book of rates settled the forseiture of goods uncustomed, &c.

Provision for goods lost at sea.

Goods shipped in carricks or galleys to pay aliens customes. Some goods formerly prohibited licenced to be exported. Prisage not charged with custom. The book of rates follows, and therein divers rules; among which the first is, that no duty shall be paid for more than is entered and landed. The last is, that no other duties be paid during the continuance of these, but only the duties enacted, prisage, butlerage, and the imposition upon coals.

And this is now the great and only rule, by which the duties of merchandizes exported or imported are to be ruled and governed. For all other duties, whether by common law or act of parliament or imposition, are now under suspence during the continuance of this grant, by the last rule of the book of rates *.

And thus I have gone through the history, or narrative, of the successive progress and various alterations of duties arising upon goods imported or exported, whether they be customes or subsidies or impositions, as far as I can meet with any evidences concerning them. And now I shall proceed to more close and particular discourses touching these duties.

C A P. XVII.

A general scheme of the customes as they stood in the time of E. 4.

IN the former discourses there lies dispersedly and scatteredly most of what is to be said concerning customes; viz. their kinds, the times when and manner how they began, their encreases and variations, the persons by whom due and the accidents that excused them, the means of their recovery, and some other particulars of this kind.

But because they lye dispersedly in several places, and the mentioning them is rather for the continuation of the history than ex proposite to treat of them, I shall resume them in this order.

First, I will begin with these that are the customes of inheritance, and therein of their several natures, when and by whom due, and how recoverable; many of which considerations will be very apposite and usefull to the second and third heads, and will be in many things coincident with them, or very explanatory of them.

It feems proper to add to lord Hale's account of the first grant of tonnage and poundage after the Restoration, that one clause in it contains a recital, that "no rates can be imposed upon merchandize imported or exported by subjects or aliens but by common consent in parliament." 12. Cha. 2. c. 4, s. 6.

Secondly, concerning impositions, and the right and power of imposing duties upon merchandizes exported or imported.

Thirdly, concerning the subsidy of tunnage and poundage as it stands settled by act of parliament, and the questions that may arise upon various clauses of the same.

I shall be longer in the first of these heads, because much of what will be said therein will be usefull and applicable in many particulars to the last of these. And besides, though at present all these former customs are under suspence; yet there is very excellent learning to be found in ancient records concerning them, which is worth the knowledge.

First therefore I shall sett down a scheme of those old customes, partly from the records themselves, partly from the black book in the Admiralty, which hath the scheme of them as they stood at the finishing of that book, which I think was in the time of E. 4. and upon comparing of the customers accounts of that time I find them exactly agreeing.

I. First therefore touching the custom of woolls woollfells and leather, commonly called the great custom, settled as hath been shewn by the act of parliament 3. E, I, and descended to his successors jure bereditario, viz. magna custuma.

1. Of every fack of wooll and of every 240 woollfells exported, by denizens 6s, 8d. by aliens 10s.

2. Of every last of hides containing 20 dickers, and every dicker tenhides, exported, of denizens 13s. 4d. of aliens 20s.

There arose certain other customes incident to woolls woollfells and hides, and therefore accounted for together with the great customes. These customes were of two kinds, viz.

1. The cocquet, viz. of every merchant denizen or alien exporting woolls woollfells or leather 2d.

2. The devoirs of Calais, where ordinarily the staple was, which began the 45. E. 3. and continued constantly after answered, at least till the end of E. 4. viz. of every sack of wooll or 240 woollfells exported by aliens or denizens 8d. of every last of hides exported by aliens or denizens 16d.

And befides these we may reckon among these great customs,.

Ob. et — which continued payable upon every fack of wooll.

3d. per lib. upon lead fet by the statute of 27. E. 3...

II. The parva custuma; and that was upon four forts of commodities, viz. cloth, wax, wines, and averdupoise, or other forts of merchandize, which was their poundage.

(1.) The

- (1.) The petit custome of cloth, viz. of these several kinds:
- 1. Cloth of scarlet or whole grain exported.
 - 1. By denizens. The imposition of 21. E. 3. set upon them 25. 4d.
 - 2. By aliens. They paid 2s. by virtue of Carta Mercatoria, and 3s. 1d. by the imposition upon cloth began the 21. E. 3. in toto 5s. 1d.
 - 3. By the Hanse merchants by virtue of the Carta Mercatoria, at which rate they paid 2s. but in the time of E. 4. they paid 3s. 6d. viz. 2s. by Carta Mercatoria, and 3s. 6d. by imposition.
- 2. Cloth half grain.
 - 1. Denizens paid 21d. by the imposition begun upon cloth the 21. E. 3: which though at first it was 14d. it was after raised to 21d. upon denizens, and so held.
 - 2. Aliens paid 4s. 1d. whereof 18d. was the composition rate sett by Carta Mercatoria; the residue, viz. 2s. 7d. was set by impositions afterward.
 - 3. Hanse or Almaine merchants paid only 18d. being the rate set by Carta Mercatoria, which they kept by virtue of their charters of privilege, notwithstanding the additional imposition upon cloth.

3. Cloth without grain.

- 1. Of denizens 14d. by virtue of the impolition fet by the 21. E. 3.
- 2. Of aliens 2s. 9d. viz. 12d. by virtue of Carta Mercatoria, and 21d. by the imposition of 21. E. 3. fet upon the cloth exported by aliens.
- 3. Of Hanse and Almaine merchants 12d. only by virtue of Carta Mercatoria, for they had by virtue of their charters an exemption from the payment of the 21d. paid by other aliens as before.

And note, that for these clothes aliens paid no poundage, viz. no 3d. per libram; for the Carta Mercatoria setting part of these duties, the 3d. per pound was not paid for these.

4. The customes of worsted.

These were imposed by the king and his council 21. E. 3. in compensation of woods, whereby they were made. This, though in the first imposition it was for the piece exported by denizens 1d. and by aliens 1d. ob. and for a bed of worsted by denizens 1od. by aliens 15d. yet, the manufacture receiving an alteration, there was in process of time alteration of the custom, viz.

For pieces of worsted,

Denizens 2d.

Of aliens 3d. befides their 3d. per lb. by virtue of Carta Mercatoris.

3. But

For a fingle piece of worsted,

Denizens 1d.

Aliens 1d. ob. befides their 3d. for poundage.

For bedds of worsted, viz.

For double bedds,

Of denizens 10d.

Of aliens 13d. ob. besides their poundage, viz. 3d.

For half doubles,

Of denizens 7d.

Of aliens rod. ob. besides their poundage of 3d.

For fingle bedds,

Of denizens 5d.

Of aliens 7d. ob. besides their poundage of 3d.

But the Hanse merchants paid only 2d. for pieces or for bedds of worfted, besides their poundage of 3d.

But note, that during the time of king Edward the 4th by a special

charter the Spanish merchants paid only English customes.

(2.) The fecond general of the petty customes was wax, viz. of every quintal of wax there was paid,

By denizens 2s. which grew by imposition; and this they paid besides their poundage of 12d. per lib. when that subsidy was granted.

By aliens, as well Hanse as others, 12d. for every quintall.

- (3.) The customes of wines, viz. 2s. per tun in lieu of prisage by Carta Mercatoria, paid by all aliens, as well Hanse as others.
- (4.) Their customes of averdupoise, viz. 3d. for the value of every 20s. paid by the merchants aliens, as well Hanse as others.

These are those which are collected as the petty customes.

And 1. it is to be observed, that when any subsidy of tunnage was granted generally of aliens and denizens, unless there were special provision by the act of subsidies to the contrary, aliens did not only answer the subsidy of poundage, but also their petty custom of poundage, viz. 3d. per lib. as appears by all the customers accounts, especially tempore E. 4.

2. It is also to be observed, that upon those clothes, whereupon the petty custom was granted by Carta Mercatoria, as scarletts half grain and cloth of assis without graine, the aliens paid not only the duty by Carta Mercatoria, but also that additional custom or imposition, which was after set upon cloth to ballance the custom of wools, unless the Hanse merchants, who most ordinarily paid only the custome sett by Carta Mercatoria.

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3. But of those clothes which were not expressly charged with custome as cloth by Carta Mercatoria, but were rated to a custom proportionable to the woolls whereby they were made, which began as hath been shewn 21. E. 1. and was after inhanced, as worsteds; aliens did not only pay their imposition set upon those clothes, but also their poundage of 3d. for the value of every twenty shillings; and this was paid as well by the Hanse merchants as others. And the reason was, because, before this imposition upon it as a manufacture of wooll, it was charged with 3d. per pound as averdupois.

Though fometimes they had intrusions, yet it revived again. This shall be shewn more at large in the next chapter.

C A P. XVIII.

Concerning aliens and their customes; and first concerning the Hanse merchants, and their privileges in relation to the customes.

In the precedent chapters we see frequently a difference between the customes of aliens and denizens; and among the aliens we see a difference between the customes of aliens themselves. The Hanse or Almaine merchants paid a smaller custome, and sometimes a smaller subsidie than other aliens; although sometimes in their subsidies they were reduced to the same measure as it is this day.

I shall therefore, in the first place, sett down the narrative concerning the Hanse merchants, and the progress of their privileges in relation to the customes; wherein, though there will be some things that will be applicable to merchants aliens in general, yet the principal scope will be to derive the privileges of the Hanse merchants: and when that is done, I shall descend to the consideration of aliens in their latitude, and who they are.

Narrative concerning the Hanse merchants.

Although the merchants of Almaine, fometimes called mercatores Almania, fometimes Hanse merchants, fometimes Easterlings, had many special privileges granted them in the time of Hen. 3. and perchance also before, which possibly were the foundation of the accessions of privileges which they had in the times of succeeding kings; yet I shall not go so high in the deducing of their privileges, because, as the great settlement of the customes began in the time of E. 1. so the privileges and exemptions of the Hanse merchants in relation to those customes, principally began in the times that succeeded that general settlement of the customes in the time of E. 1.

In the first settlement of the great customes anno 3. E. 1. it appears to be without any distinction between denizens and aliens: they paid alike; but the discrimination grew at first by the Carta Mercatoria 3. E. 1.

By that chafter the king granted the liberties therein comprized to all merchants strangers of all countries, with which any commerce was then used, viz. Almania, Francia, Hispania, Portugallia, Navarra, Lumbardia, Tuscia, Provincia, Cathalonia, Ducatus Acquittania, Tholosana, Tartartina, Flandria, et omnium aliarum terrarum et locorum extraneorum venientibus in regnum Anglia. And all these foreign merchants granted to the king and his successors these aliens customes comprized in that charter. And accordingly the customs hereby granted were enjoyed till the resumption in 5. E. 2. which resumption thereof was afterwards repealed 15. E. 2. as hath been shewn. So that this was in nature of a great contract between the king and the merchants, and carried in it a reciprocal consideration, viz. liberties and privileges to the alien merchants, and advance of old customes and grant of new to the crown by them.

In the latter end of that charter there is this clause: Volumus autem, ac pro nobis bæredibus et successoribus nostris concedimus, quòd nulla exactio, prisa, vel prestatio, aut aliquod aliud onus, super personas mercatorum prædictorum, mercandisas seu bona eorundem, aliquatenus imponatur contra formam expressam superiùs et concessam.

This should seem to be a general concession to all foreign merchants, exempting them from all new customes or impositions thereafter to be imposed. But it prevailed not in that latitude, as shall be shewn.

But, besides this general charter granted to merchants strangers, the Hanse merchants, which were but a branch of the merchants of Almaine, had more particular liberties granted to them; for 1. H. 3. there was granted to them a house in London called Guildbalda Teutonicorum, which was afterwards confirmed by E. 1*.

These Hanse merchants were those merchants of those great towns in Germany lying upon or near the Baltic sea, and are at this day called the Hanse towns, consisting of sour principal head quarters, viz. Lubeck, Cologn, Brunswicke, and Dantzicke, with their under quarter towns.

There was a pretended defect espied in the charter of E. t. to the Hanse merchants; because the charter was not granted pro se et bæredibus. And thereupon the 7th December 11. E. 2. there was a new charter granted to

^{*} The place thus granted by Henry the third to the Hanse merchants is known by the name of the Steleyard or Stelehouse. See Stowe's London, Strype's ed. in 1720, book 2. page 202.

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the Almaine merchants, not in general, but illis scilicet, qui babent domum in civitate London' que Guyldbalda Teutonicorum vulgariter nuncupatur, which were the Hanse merchants. By this charter the king confirms their liberties formerly granted as well by Carta Mercatoria, as by the particular charters; and further grants in express words, quòd nos vel baredes nostri, super ipsos aut eorum bona vel mercimonia, custumam novam indebitam non ponemus, salvis nobis et baredibus nostris antiquis priss nostris; quòdque ipsi per tatum regnum nostrum de bonis et mercimoniis suis de pontagio pavagio et muragio in perpetuum sint quieti, ita tamin quòd aliquem, qui de guildà ipsorum antepradici non existet, nec ejus bona seu mercimonia, de guildà sua non advocent ullo modo.

This charter was confirmed by king E. 3. 14 Martii 1. E. 3. by R. 2. 6 Nov. 1 R. 2. and after all by king E. 4. by confent of parliament 13. E. 4 *. as shall be shewn.

By these charters and confirmations the Hanse merchants had not only perfonal privileges, as they were merchants, but they obtained the effect of an incorporation, and also held the Stillyard as the house of their incorporation in succession.

By virtue of these charters thus express, especially that of E. 2. they enjoyed certain exemptions in relation to customes, which were not allowed to other merchants aliens, though in some things their charge was alike, as before shewn in the precedent chapter.

For inftance, - It hath been before flewn, that befides the customes of cloth fett by Carta Mercatoria, there began in the 21. E. 3. an imposition or custome to be fett upon cloth and worsteds in proportion to the custom of a fack of wooll; which new custome or imposition in process of time was inhanced, as appears by the scheme of the customes in the precedent chapter. And all aliens except the Hanfe did not only pay their custome contained in Carta Mercatoria, but also the new imposed custom laid upon cloths 21. E. 1, and in the fucceeding times. But the Hanse merchants had a greater liberty by reason of that clause of exemption in the charter of E. 2 .- For some time they paid the 21d. imposed upon cloth 21. E. 3. But when they paid that, they were exempted from payment of the 12d. and 18s. and 2s. fet by Carta Mercatoria. as appears by the king's writ pleaded and allowed Communia Pafeb. 35. E. 3. pro Johanne de Panetry et Willielmo de Clapton collectoribus parvæ custumæ London', whereby the merchants of Almaine paying the 21d, upon a cloth imposed by 21. E. g. are acquitted of the 12d. fett by Carta Mercatoria. But afterwards the Hanse merchants rather chose to pay the duty upon cloth sett by Carta Mer-

catoria, and were discharged of these new impositions set by 21. E. 3. as appears by the scheme above expressed .- Again, for pieces of cloth and narrow cloth, that were not chargeable by Carta Mercetoria, all aliens paid only their poundage until 21. E. 3. when a rateable imposition of 21d. per cloth was fet upon such pieces and narrow clothes; and then they paid not only their poundage, but also the rateable imposition. But Communia 35. E. 3. ubi supra, the Hanse merchants paid only their poundage for such narrow clothes and remnants, and not the rateable custome of 21d. for a whole cloth. Again, whereas until the 21. E. 3. all merchants aliens paid only poundage of 3d. per libram for worsteds of all sorts, and 21, E. 3. a rateable custome was fet upon them proportionable to a fack of wooll, whereupon other merchants aliens were not only forced to pay the new imposition but also 3d. per lib. for poundage; the Hanse merchants, by writ entered upon the last mentioned record, were discharged of the imposition upon worsteds set by the 21. E. 3. and paid only their poundage. Only for bedds of worsteds. they were enforced to pay 2d. per bedd, over and befides their poundage.

And these differences were bettomed upon these exemptions, that the Hanse merchants had by virtue of the charter of E. 2. from new customes or impositions.

And although in some acts of parliament of the grant of tonnage and poundage the charge is laid equally upon all aliens, yet in some of the acts there is provision for the Hanse merchants to be charged only with their old custome 1. E. 6. cap. 13. But at this day there is no special provision for the Hanse merchants in the subsidies of tonnage and poundage, but they are equally charged with other aliens.

The Hanse merchants had their divers vicifitudes.

In the times of H. 6. they were in displeasure with the English, and the English with them. There were many violences and injuries used on both fides; and it grew to that height, that, in the acts of tunnage and poundage and other new subsidies, there was no provision for them; but contrarily there were many times derogatory clauses in those acts, whereby they were expressly put into the same common consideration with other aliens. Rot. Parl. 31. H. 6. n. 8. And yet farther by an express act of parliament, via. Rot. Parl. H. 6. n. all their franchises and privileges are resumed.

The refumption and suspension of their privileges continued all the time of H. 6. But E. 4. taking upon him the crown, the Hanse merchants fall in with the new king; and possibly he thought it his advantage to engage them; and from the first entrance of his reign he received them into great favor, which he continued all his life.

And

And whereas by reason of the acts of resumption in the time of H. 6. the Hanse merchants were charged with customes subsidies and impositions as other aliens, especially as to cloth exported; the king, by his privy scal directed to the treasurer and barons P. 1. E. 4. and by judgment of the court of exchequer thereupon, discharged the Hanse merchants of the impositions upon cloth sett 21. E. 3. and they are only charged with the sums charged upon cloth by Carta Mercatoria, viz. two shillings of cloth of graine, eighteen-pence of cloth of half graine, and one shilling of cloth of assist without any graine. Vide inter compota parva custuma in London' anno 1. E. 4.

4. E. 4. cap. . in the act made against aliens merchants, special provifion is made for the Hanse merchants, and a special clause for the confirming of their charters and liberties, viz. the merchants of the Hanse having Guildbaldam Teutonicorum.

Rot. Parl. 13. E. 4. n. 2. the king reciting the former intercourse of trade between the English and the merchants and people of the nation of Almaine, being under and of the confederation leige and company called the Dutch Horif, otherwise called the merchants of Almaine, and having the house in London called Guildhaldam Teutonicorum (note the description and restriction of the company) by special charters made and confirmed in parliament, all their charters are recited and confirmed; and it is further particularly enacted, that no prifes exactions nor prestations shall be sette uppon their persones or goodes, otherwise than have bean sette uppon theym any tyme before this c. yere nowe last past or above. The tenor of the king's confirmation in parliament, after the recital of the charters, runs thus : Nos considerantes, prefatos mercatores Alemann' mercatores Hanze Teutonice vulgariter nuncupat' in dicto regno et dominiis nostris, dictis suis privilegiis libertatibus concessionibus et indultis, occasione guerrarum turbationum et bostilitatum jam nuper inter subditos nostros et ipsos de Hanza predictà contingentium, destitutos et exinde tam ipsos quam subditos nostros multipliciter fuisse et esse lesos, ex certis bonis respectibus nos moventibus, de advisamento et affensu dominorum spiritualium et temporalium et communitatis regni nostri Anglie in presenti parliamento nostro existentium, et auftoritate ejusdem parliamenti, et ex certa noftra scientia, pro nobis et beredibus ac universis successoribus nostris, ipsos mercatores Hanze in pristinum statum utendi et fruendi in dicto regno nostro et aliis locis nobis subjectis, supradictis suis omnibus et singulis privilegiis libertatibus concessionibus et indultis, quo fuerunt aut effe debuerunt, si guerre turbationes et bostilitates bujusmodi non contigiffent, reponend' et integre restituend' duximus, ac tenore presentium reponimus et integrè restituimus, sic quod supradicti mercatores Hanze predicte, et sorum successores, universis privilegiis libertatibus concessionibus et indultis predictis

uti et frui debeant perpetuis futuris temporibus, eo modo quo usi sunt aut usi fuissent, si predicte guerre turbationes et hostilitates non accidissent; ac preterea eisdem
mercatoribus Hanze ipsa eadem privilegia libertates concessiones et indulta, pro se
et suis successoribus, approbando et ratificando innovamus et confirmmus, &.

By the strength of this act of parliament and charter the former liberties of the Hanse merchants are revived, and indeed made more strong and effectuall; for whereas there possibly was not before a politick capacity or corporation settled, whereby they might be capable to take in succession, or at least it might have been questionable; the strength of this act of parliament, as to the purpose at least of enjoying their liberties and house, gives them a perpetuall succession, for the very implication of an act of

parliament may create a capacity.

But yet the bounty of the king towards these merchants of Hanse rested not here. But Rot. Parl. 14. E. 4. n. 15. it is recited, that, whereas for the reducing of the merchants of Almaine being of the leige and confederation of the Dutch Hanse to the old intercourses of merchandize with the English, it hath been agreed between the king and the people of the said Dutch Hanse, that the merchants of the Hanse should have a certain place within the city of London, called the Stillhof, otherwise the Stillyard, with divers houses thereunto adjoining, to them and their successors, &c. and whereas the mayor and commonalty of London be feized of the place called the Stillyard under certain trusts according to the will of John Reynwell, and likewise the bishop of Winchester and some other religious houses be seized of certain other lands adjacent, &c. it is enacted, that the merchants of Almaine being of and under the confederation leige and company of the Dutch Hanse, otherwise called the merchants of Almaine. having an house in the city of London called Guildbalda Teutonicorum, that be or hereafter shall be, shall hold and enjoy to them and their successors the faid houses. Provision is made for the performing of the charitable bequest, and also the king makes by that act compensation to the religious houses for their rents and inheritances.

This is the first settlement of the house called the Stillyard upon them. They had indeed formerly their Guildbalda Teutonicorum, or their common hall, but not the Stillyard in perpetuity till now.

Two things are observable upon this charter, viz.

1. That it was not all the merchants of Almaine that had those liberties; but the Hanse merchants which were confederate into a kind of trading body, and had their corporation, as it were, at their Guildhall in London.

2. Here is the name of their corporation and their fuccession, in which capacity they did take and to this day hold that house called the Stillyard.

By the statute of 19. H. 7. cap. 23. all acts touching merchandize prejudicial to the merchants of the Stillyard repealed as to them and their liberties.

By the statute of 22. H. 8. cap. 8. whereby aliens made denizens are made liable to aliens customs, provision is made nevertheless for the Hanse merchants of the Guildbalda Teutonicorum, that they be not thereby prejudiced.

In the beginning of the reign of E. 6. there was a great care for them, infomuch as in the very subsidy of tunnage and poundage there is provision made for their indemnity against the encrease of their customes.

But afterwards in the time of the same king they were discountenanced,

and by acts of state their privileges suspended.

In queen Mary's time, upon the account of religion as well as state, they were again received into favour.

In the time of queen Elizabeth upon the fame account they were dif-

In king James's reign they were again received into favour, and their

privileges countenanced by publick acts of the councill.

In the beginning of the reign of king Charles the first they began again to be in discredit, insomuch that in 8. Car. upon a special commission an inquisition was taken, whereby it was found that their house called the Stillyard escheated or was forseited to the crown. But little proceeding, that I can find, was upon that inquisition.

Of very late years in the time of his now majesty the former proceedings in the time of his father were endeavoured to be revived, and a patent defired to be passed of their house called the Stillyard, upon pretence, that either it did not well pass to them for want of a sufficient corporation, or if it did that it was forfeited or dissolved. But this prevailed not; but by a special order of the councill dated their title to the Stillyard was afferted, and all farther proceedings against them superseded.

C A P. XIX.

Concerning aliens at large, and who are liable to alien's customes.

I appears by the several acts of subsidies of tunnage and poundage, and also by the Carta Mercatoria, that aliens were chargeable with greater customes and subsidies than denizens were; and hence grew great distinction between denizens and aliens in respect of customes.

Denizens were of two kinds, denizens born and denizens made. And it feems these paid their duties alike untill the statute 1. H. 7. cap. 2. whereby it is enacted, that any person made or to be made denizen shall pay like customes and subsidies as he should have paid before he was made denizen, any letters patents or ordinances made to the contrary notwithstanding.

By the statute 11. H. 7. cap. 14. all merchants strangers, and others made denizens by the king's letters patents or otherwise, pay such customes inwards and outwards, as they should have paid if the same grants had not been made.

By the statute of 22. H. 8. cap. 8. the same thing in effect is again enacted, viz. that they pay the same subsidy and custom as they should have paid before they were denizens, any grant or grants to them made or bereaster to be made, or any ast statute or ordinance to the contrary made or had notwith-standing. There is a provision, that it should not extend to be prejudiciall to the merchants of the Stillyard, but that they enjoy the privileges they had before this parliament.

Upon these statutes these things are observable, viz.

- (1.) That an alien made denizen by letters patents before or after these statutes shall yet pay alien's customes; for those statutes have as to this purpose restrained and qualified his indenization not to extend to customes.—
 But this is intended of a general indenization by letters patents; for the king may at this day, by a special clause in his letters patents, either dispense with these statutes, or grant specially, that he shall pay customes and subsidies as a free-born denizen, notwithstanding these statutes; for this concerns only the king's interest.
- (2.) That a person naturalized before those acts by act of parliament yet shall pay alien's duties. The reason is, because these acts as to naturalizations precedent do derogate from their privilege; and that,

- 1. By force of the words letters patents or otherwise ..
- 2. By force of the derogatory clause any act statute or ordinance to the contrary notwithstanding.

And possibly this was one of the reasons why these statutes were so often renewed, viz. 1. H. 7. 11. H. 7. and 22. H. 8. to take off the privilege of the persons naturalized before the acts made.

(3.) But persons, naturalized by act of parliament after these acts, were exempted from the alien's duties; because they are by the act of naturalization rendered to all intents and purposes as if born in England, which concludes every man to say the contrary; and though an act of parliament may take away the force or effect of a precedent act of parliament, or of a precedent or future patent, yet it cannot take away the force of a future act of parliament.

In the latter acts of subsidies there hath been kept the distinction between naturall-born subjects and strangers or aliens. And they have used the word naturall-born subjects and not the word denizens, which, as hath been said, is more extensive than the word naturall-born subjects. Yet the strength of a naturalization is so great, that he that is naturalized is a naturall-born subject within that act, and shall pay only as a naturall-born subject pays.

If an alien come into England, and have iffue here, he is a naturall-born fubject. Yet (I know not by what law) fuch a naturall-born fubject hath been decreed heretofore to pay alien's duties. Vide Decret. Possibly it may be upon a reason of state; because he is as in the next degree to an alien, and the relation so near, that he is presumed more to savour them than the English. But this is now settled; for, by the statute of 14. Car. touching the customes, children of aliens under one-and-twenty years not permitted to trade in their own names.—By 14. and 15. H. 8. c. 4. an Englishman sworn to a foreign prince shall pay alien's customes.

These words are in the preamble of the 22. H. 8. cap. 14. - BDITOR.

^{† 13.} and 14. Cha. 2. c. 11. f. 10.-EDITOR,

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When customes and subsidies shall be said to be due, and when not.

TOUCHING the time when customes or subsidies shall be said to be due to the king, it will fall under a double consideration, viz.

I. In relation to goods exported, or customes outward.

II. In relation to goods imported, or customes inward.

I. As to customes outward, or customes of goods exported, it hath been in part touched before in the consideration of the grant of the customes of woolls woollfells and leather.

There are these two things that must concurr to intitle the king to customes outward:

(1.) They must be shipped or laid on board of some ship or vessel to be exported.

(2.) They must be shipped to be exported beyond the seas, and immediately upon such shipping the king's duty of customes, and his duty also of subsidies outward, is vested in the king.

(1.) It appears by the original grant of the great customes of woolls woollfells and leather, that it was to be paid of fuch goods, ke viront bors del realme, that is, as foon as they are laid aboard a ship or vessell for that purpose, and before they arrive beyond the sea. For if the king should expect till they come to their foreign port, he might lose his goods; and the words of the grant of the petty custom by merchant strangers for goods exported, namely of woolls woollfells leather and averdupoife, are, que de regno nostro educent vel educi facient, as appears by the Carta Mercatoria before expressed; and yet those customes outward are due upon the very lading them on board, before they are actually transported. So in the grant of the subsidy of poundage, cloth, &c. it runs much in the same stile, viz. one subsidy of poundage, that is to say, of all goods and merchandize, &c. to be carried out of the realm or any your Majesty's dominions to the same belonging twelve-pence for every twenty shillings; and so in the subsidy of cloth to be exported, &c. 3s. 4d. And yet in all these cases the duty grows due by the very lading on shipboard for that purpose; and that appears by the remedy or penalty that is given for it, viz. that if any merchandize, &c. shall at any time hereafter be shipped or put into any boat or vessel to the intent to be carried into the parts beyond the sea, &c. the

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customes not paid or the collector agreed with, &c. they are forfeited; so that the very lading them in any ship, or in any boat to that purpose, intitles the king to the duty and his remedy for it by forfeiture of the goods.

Upon this that hath been faid it appears, not only when the duties out-

ward are due, but also when they are not due.

If goods outward-bound are lost, or perish, by the sea or fire or pirates or other casualty, yet the duty if unpaid is in strictness recoverable, or if paid it cannot be in strictness demanded back again. But in ancient time the king usually granted his privy seal in such cases to enable them to ship out as many goods custom free in the same port. But at this day and for many years in the acts of subsidy of tunnage and poundage there is a settled provision for that purpose by the act itself.

If a merchant import or unlade foreign goods, and pay customes inward, and presently reship them again to be exported, in strictness of law he ought to pay his customes outward. But by the favourable rules consirmed by act of parliament in the book of rates he hath allowance, in some cases of

the whole, in some cases of the half subsidy, as the case requires.

If any man ship forth goods from one port to another in this kingdom, there is by law no subsidy or custome due, and so was the constant usage when the great customes were only had, as appears by several writts to the customers of the ports where the goods are landed. But then the course is, and always beth been, for the exporter to take a coast cocquett, and give security for the discharging the same accordingly; and upon the bringing of a certificate from the port of unlading to the customer of the port where the goods were laden aboard, thereupon his port-bond is to be cancelled. Vide stat. 33. H. 8. cap. 7. and 2. E. 6. cap. 37. for brass and bell-mettall. Class. 20. E. 3. p. 1. m. 16. V. Claus. 7. E. 3. p. 1. m. 4. customes paid and repaid upon certificate.

II. As to customes inward, and the times when such customes or subsidies are due, the best measures of the time when these duties grow due are these;

(1.) They must be imported from some place beyond the seas; for if they be carried only from one port to another within the kingdom, this is not any importation to intitle the king to customes. And therefore, though foreign goods be imported into the port of London and there duly pay their custom, and yet afterwards depart with their goods to the port of Hull, they are not to pay another custome at Hull. But then by the statute of 3. H. 7. cap. 7. they must bring a certificate of the custome paid and the particulars of the goods. Otherwise the goods are forseited if landed at

Hull

Hull, the customes there not paid. But if it be transported from one creek or part of the same port to another part of the same port, there needs no such certificate, for the statute speaks of another port.

- (2.) The goods ought to be imported by way of merchandize; for if they come in by reason of soul weather, or to escape pirates, or to take in fresh water; yea, though they unlade part of their lading or all of it upon such an extremity; yea, yet farther, though they sell within the port some part of their lading for the destraying of these casualties, as the mending their ship and buying of victuals; even by the common law they were to pay no custome nor subsidy for any more than what was so actually sold. And this appears by divers precedents, as well before as since the statute of 28. E. 3. cap. 13. Vide Claus. 43. m. 30. pro mercatoribus Almaniae Spruce and Holland. And accordingly if they are wrecked upon the English coast, no custome by law is due for more than is sold. Claus. 50. E. 3. p. 2. m. 8. Claus. 13. R. 2. p. 2. m. 13.—Burgensibus Berwick Rot. Parl. 50. E. 3. n. 3. Vide 14. E. 3. c. 21. 34. E. 3. c. 19. 38. E. 3. c. 8.—Entryes in outre nosme 13. R. 2. c. 9. 3. H. 7. c. 7. 1. H. 8. c. 5. 2. E. 6. c. 22.
- (3.) At common law if a merchant had voluntarily come into any port, and broke bulk and fold or unladed any part by way of merchandize, he should have paid his custome for the whole ship's lading; because by this act the merchant did in effect declare he came in by way of merchandize and trade. But, by the statute of 28. E. 3. cap. 13. confirmed by the statute of 20. R. 2. c. 4. that law was altered; and though the merchant came in voluntarily and broke bulk and sold or unladed part, he should not be enforced to pay custome for the rest of the ship's lading. And at this day by the first rule of the book of rates * that law is most effectually settled, viz. every merchant shall bave free liberty to break bulk in any port allowed by law, and to pay custom and subsidy for no more than be shall enter and land.—
 But these laws did not extend to prisage; and therefore at this day, if bulk be broken, prisage shall be paid for the whole ship's lading, as hath been resolved, as appears before in the chapter of prisage.

(4.) If cloathes or other goods are exported out of Ireland into England, they shall pay a custome outward in Ireland, but no custom inward in England, no more than in a case of transportation from a port in England to another port in England; because though it be a differing kingdom, and

At the end of 12. Cha. 2. c. 4. - Esiros.

⁺ Ante, page 122. Entros. In the and I lived what and redired W

therefore he shall pay there a subsidy outward, yet it is part of the dominions of the crown of England, and therefore shall pay no subsidy here inward. Rot. Parl. 51. E. 3. n. 71. But if a merchant pay his subsidy or customes outwards in Scotland upon goods transported from thence by sea into England, he shall pay custome or subsidy inwards here, because they are different and independent kingdoms and dominions. But goods transported from Berwick to Newcastle or any other port pay neither duties inward or outward, but are to be discharged by certificate by virtue of the statute of 3. H. 7. c. 7. For Berwick, though part of Scotland, is by conquest annexed to England, and as to most purposes part thereof.

(5.) If goods are taken as lawful prize upon the sea, and imported or brought into an English port, these prize goods shall pay customes inward;

and accordingly it hath been refolved.

(6.) When goods are imported by way of merchandise into any port of England, great question hath been heretofore made, when the custome and subsidy becomes due, viz. whether by the coming into the narrow seas being the king's dominions, or whether by coming into the port, or by break-

ing of bulk, or entering the goods, or landing the goods.

In Michaelmas 4. Car. in the exchequer there was a notable case touching this matter by English bill between the lady Swinerton executor of fir John Swinerton and fir John Wolestonholme and others, which was to this effect. King James, having by act of parliament the subsidy of tunnage of wines, and having by letters patents fet a farther impost upon wines, by indenture 16. May c. 9. Jac. granted unto fir John Swinerton the faid fubfidy and impost, which at any time after the feast of St. Michael last past had happened come arisen or grown due, or should or might or ought to happen arise come grow renew be due or payable to the king his heirs or successors, of any sweet wines, which, at any time or times within or during the time or term therein mentioned, had been or should be brought from any parts beyond the seas into the port of London or members thereof; to hold from the Annunciation next following for nine years. Sir John made the plaintiff his executor, and then dyed, upon the 25th of March 1623, which was the last day of the term. Diverse sweet wines were imported into the port of London, fome whereof were not entered till after the faid 25th day of March, and some were entered in the custom-house upon the said 25th day of March. but not landed till after. So though the questions upon the case were four, yet they were in effect but these two, viz. 1- 1 by the state of

1st. Whether the lady should have the subsidy and impost of the wines imported within the term, but not entered till after the term?

2d. Whether she should have the subsidy and impost of the wines imported and entered within the term, but not landed till after the term?

In this case these points were resolved:

- 1. That if the grant to fir John Swinerton had been of all the imposts and subsidy of such sweet wines, as should be imported within the port of London within the space of three years to be accompted from the Annunciation next after the indenture; in that case if the the wines were imported within the term the lesse should have the duties, although they were neither entered nor landed within the term; because the grant carries the duties of these wines if imported within the term, though the duty became not due till after the term.
- 2. But according to the special penning of this demise it carries only such duties as grew due within the term; and therefore though the wines were imported within the term, yet if the duty do not arise within the term, the duties do not pass; and therefore it is necessary to enquire when these duties grow due. If by the importing, or at least by the importing and entering, then they would belong to the farmer; because imported, and some imported and valued within the term. But if the duty grows not due until the unlading, then they belong not to the farmer, because the unlading was not till after the term.

It was resolved by the court against the plaintiff by the opinion of Walter chief baron and Trevor against the opinion of Denham, viz.

- 1. That the duty of tunnage by the act of subfidy, nor the duty of impost (if it were a duty) doth not settle by the importation.
- 2. That these duties grow not due by the entry of the wines in the customhouse; for notwithstanding the importation into the port, and notwithstanding the entry of them, yet the merchant may carry out the goods again for another port.

3. But that those duties grow due by the unlading, and not before. And the reasons given were,

- 1. As to the impost. The king's letters patents create no duty, neither are the goods charged; but all that can be done for the recovery of the impost is only to hinder the merchant from unlading till the impost paid or secured.
- 2. As to the subsidy, the act gives not to the king any duty by the importation; but gives the king a forfeiture, if the goods be unladen the subsidy not paid. And therefore in construction of law, the law gives

it the king, when it gives him the remedy, viz. by the unlading and not before, and accordingly it was decreed.

Now to fay what I think of this matter;

1. As to the ancient customes as well great as small, it seems very plain,

1. That the duty did not grow due merely by the importation into the narrow feas, though part of the king's dominions; neither was that ever practifed; for then the king should be intitled to the custom of all the goods that passed between Spain and the Netherlands, although they never intended to make any port in England, for which there is neither colour nor practice.

2. That the duty is not due only by the coming of a ship into an English port; for so he might do for safeguard, or to stay for a wind, and yet without any intention of merchandise; and the customs are due only from such goods as are imported for merchandise, and not otherwise.

3. But if a ship imported any goods at common law into any English port by way of merchandise, when that doth once appear, the king by the common law was intitled to the customes of all the goods imported in such a ship in such a port; for the old grant of the old customes is of all the goods imported by way of merchandize, and accordingly most certain was the practice at the common law.

4. But because the law neither can take notice of intentions, nor try them, without some overtact, there was in this case an overtact required to make it out, that the goods were imported by way of merchandise; and that overtact was sale of part of the goods without any constraint; and this is called breaking of bulk, and at common law such breaking of bulk intitled the king to the custome of the whole ship's lading. But if bulk were taken out not in a way of trade, but for necessity, as to repair or victual the ship upon an emergent necessity, this was not such a breaking of bulk, as intitled the king to the customes of the whole lading; for it did not evidence an importation of the goods to the intent to trade.

5. But though this were the common law, yet by the feature of 28. E. 3: c. 13. the common law was changed in this point; and the merchant importing and felling part is excused from payment of customes for more than he fells; though this extended not to prifage, as is before shewn.

And thus much touching the time when the duties of customes becomes due.

2. Touching the subsidy of poundage, the words of the act, that grants or qualifies the grant, must determine. The usual manner of the grant is thus much of all wines, which shall come or be brought into any of the ports of

this kingdom by way of merchandize, &c. Upon this grant, if it went no further, I should think it very plain,

1. That such an act creates a duty in the king, and he may originally sue for the duty itself as well as for the forfeiture, for landing goods the duty not paid.

2. That this gives the king this duty of all the goods imported by way of merchandize; and therefore as in the former case of customes, so in this of the subsidy, if once bulk be broken and part sold, the king's farmers were intitled to the subsidy of the whole ship's lading; for now it appears by an overt act, that the whole lading was imported for that end.

But to remedy this mischief, in the first rule of the book of rates this is corrected; for it is thereby enacted, that the merchant shall pay subsidy for no more than he lands. So that at this day, upon this reason, the duty of the subsidy commenceth only by the unlading, and not by the importation by way of merchandize; for no duty is due for any more than what is unladen.

Touching the commencement of the duty of import, I need not speak; for the truth is, it created no duty, as hath been shewn; and therefore it is impertinent to examine the time when it attacheth.

C A P. XXI.

Concerning the entry of goods inwards and outwards, and bow to be

HE entry of goods is nothing else, but a note in writing delivered in by L the merchant or those employed by him unto the king's officer of the customes, containing the quantity either in weight or measure, and the marks and kinds of the goods by him imported or exported, to the end the king may be afcertained what duty to expect, and the merchant may be enabled either to pay or secure or compound that duty, so that he may lade or unlade his goods fafely without forfeiture for want of due answering the customes or subsidies due for the same. If the merchant be exactly certain of the quantity and nature of his goods, (which is very difficult in case of goods imported) he may enter them at his peril. But then if he land his goods, and the officer upon view or weight find him to exceed what is fo entered, it will in strictness be a forfeiture of what exceeds his entry; for he hath neither paid nor compounded for that furplusage. The just and fafe and usual way, therefore, for the preventing of loss to the VOL. I. ·Ff king

king and forfeiture to the merchant, is to enter them by consent or estimate; and if they shall amount to more upon fight or weight when landed, that then he will be answerable for the subsidy or custom of the surplusage. For this is a good agreement with the customer or comptroller, as it is resolved Commentaries 1. Fogassa's case; and thereby the merchant saves the forfeiture of his goods: for the customer ought upon such entry to grant the merchant a bill of sufferance or fight to permit the merchant to land or lade his goods without seizure. And on the other side the king is secured his duty; for the entry being thus special, all the officers are allarmed to see the goods weighed or measured or examined, and by that means the short entry at first is made good by a post entry; and the king by that means secured of his duty for what is short entered at first; for the entry is that, whereby the king's duty is answered, and according to which the king's officers of his customs are to account.

We have seen what the entry of goods is, and why first constituted. But for the explication of this business we are to consider, 1. Of what kinds such entries are. 2. By whom to be made. 3. By what laws. 4. In what manner.

Touching the kinds of fuch entries they are generally of two forts, viz.

(1.) The entry of such goods, whereof in truth no custom is or can be due, viz.

When forreign goods already customed in one port are shipped to another port in the realm, then by the statute of 3. H. 7. cap. 7. there ought to be brought a particular certificate of the goods so customed in one port to the customer of the other port of unlading; or otherwise he must pay his customes again at the port of unlading; or if he lands them, such customs unpaid or no such certificate made, the goods are forfeited.

Or where native customable goods are shipt in one port to be unladen in another port in the kingdom, the merchant ought to give in a particular of the goods in the lading port, and to take a coast cocquet for the clearing of those goods, and give security for the carrying of those goods to the port designed, which are called port-bonds; which are to be discharged, upon the bringing back of a certificate from the unlading port that the goods are there unladen.

(2.) The fecond fort of entry is for those goods, whereof customs outwards or inwards are due and payable. And these again are of two forts, either a pre-entry or a post-entry.

1. The pre-entry is that entry, which is made before the goods are laden aboard if to be transported, or before the goods imported be unladen, containing

taining the certain content and the natures of fuch goods, to the end the king may be answered his duties, and the merchant saved from the forfeiture, by payment of his customes, or agreement with the customer and comptroller for the same; for if they be laden aboard or unladen without such payment or agreement, the goods are forfeited.

And this again is of two forts, viz. the entry by the merchant or owner of the goods, and the entry of the master or purser of the ship or vessell.

Touching the pre-entry by the merchant, this is of two kinds also, viz. an entry at fight, or an entry at the perill of the merchant.

The former is a generall entry of fuch or fuch goods by guess or estimate, with an agreement with the customer, if, upon search or weight, it shall be found more or other than what is so entered, to be rateably answerable for it. And upon this the customers do and ought to grant a bill of sufferance to unlade those goods; and if upon the search or weight it shall prove to be more or of another nature, then the merchant is to make his post-entry of what is omitted, and answer the custome and duties accordingly. By this means the merchant is secured from the forseiture of his goods, though laden or unladen before the full custome paid, and the king secured of his duty.

The second fort of pre-entry is, when the merchant enters his goods at his perill, wherein the danger is his; for if in truth that entry be not full and perfect, and the goods entered were laden aboard, or inward are unladen, and it be discovered that there is a mis-entry, and thereupon the officer seiseth, the merchant loseth the goods whereof the customes are not in truth answered upon his first entry. But though this pre-entry be faid at the perill of the merchant, yet if, before the shipping of the goods outward bound or unlading of the goods inward bound, the merchant find his error, he may supply it with a fuller entry. Nay, if the goods be so shipt or unladen, yet before feizure made of the overplus the merchant may rectify his entry by a post-entry, and so save the forfeiture of the surplusage of the goods not before entered. And so is the constant practice; for as long as there is fair dealing in the main, fo that the king is truly answered the duty, the merchant ought not to be catched or surprised for unwilling miftakes; and it appears to be fuch, when the merchant of himself rectifyes it before a seizure.

And thus much for the pre-entry of the merchant.

Touching the pre-entry of the master, or purser, or other mariner having the government of the ship, the master or chief rector of the ship, he hath the bills of lading, and by that means he hath a kind of controll upon

the merchant. And therefore to the end the king may have all the means possible to prevent defrauding of his duties, the master purser or governor of the ship is to give an account of the goods under his charge; and by the statute of 1. Eliz. cap. 11. he is to be examined upon his oath touching the goods in the ship; and if he shall refuse or not truly answer, he is subject to the penalty of 100 l. And by the statute of 13. and 14. Car. 2. touching the customes, the master or purser is bound upon oath to make a just and true entry of the burthen and lading of every ship inward and outward, and of divers other particulars in that act mentioned, upon pain of 100 l. And thus much concerning the pre-entry.

2. The post-entry is, as hath been shewed, when the merchant, not having made either a true or full entry before, but either made his entry upon sight, or, if his entry be peremptory, yet afterwards discovering his error makes a full entry of his goods imported or exported before seizure; and this is called a post-entry.

If the merchant makes his entry at fight, and agrees if there be more he will supply his entry and pay the surplusage of the duty, this prevents all forfeiture; for he always may have in such case a bill of sight or sufferance to land his goods; and if upon search or weight they appear to be more, he may of course make his post-entry of what was omitted in the former entry. But if he makes his entry at his perill, though before seizure he may supply the desect of his former entry with a new or post-entry, and so save his goods; yet if such post-entry in the case of such an entry at perill come not till after seizure, the post-entry in that case comes too late to save the forfeiture for the king, and the informer is intitled to the surplusage uncustomed by the seizure; and the merchant would have deceived the king if he could.—And thus much concerning the kinds of entries, and the grounds upon which they are made.

Now touching the quality of the entries by the merchant, this is required generally in them, that they be true, viz.

1. True in respect of the nature or quality of the goods, whereof before.

2. True in respect of the owners or proprietors. -

By the statute of 3. H. 7. cap. 7. it is enacted, that no merchant denizen nor stranger enter any goods exported or imported, but in the name of the true merchant owner of the same, upon pain of forseiture of the goods.

By this act, if one Englishman had entered goods in the name of another Englishman, or one alien had entered in the name of another, though the king thereby had not been at any prejudice in his customes, the goods

goods had been forfeit, as well as if an alien that pays greater customes had entered his goods in the name of an Englishman.

By the statute of r. H. 4. cap. 5. this is rectified; and it is enacted, that an Englishman may enter in the name of another Englishman, or one stranger in the name of another stranger.

But no stranger or denizen shall enter in the name of another, whereby the king should lose his customes or subsidies; nor no subject free of prisage or butlerage should custome in his own name the goods of another, upon pain of forfeiture of the goods and other penalties.

By the statute of 2. E. 6. cap. 22. the statute of 1. H. 7. is confirmed. But by the statute of 1. Eliz. cap. 11. it is again enacted, that no person enter any goods imported or exported in the name of any other person than in the name of the very owner thereof, not being sold before fuch entry, or before the arrival of the wares from beyond the sea, upon pain of forfeiture. So that this statute seems to prohibit one Englishman to enter in the name of another, or one alien to enter in the name of another alien, though the king be at no loss thereby, as well as such an entry by an alien to enter in the name of an Englishman, or such other entry whereby the king is at a loss in his duties. And this statute stands in force at this day. But yet the practice by indulgence and connivance hath run contrary; for I have not known any questioned for a false entry in another's name upon this statute, unless by such entry the king hath been at a loss in his customes; as where one subject to alien's duties enters in an Englishman's name, or where one not privileged from prifage or customes enters in the name of one that hath that privilege in the whole or at least in some part.

C A P. XXII.

What shall be said a shipping to entitle the king to the subsidies or other duties of things exported; and what an unshipping, &c. to entitle the king to the duties inwards.

I HAVE before shewn, that as things stand at this day by force of the act of tunnage and poundage of 12. Cha. 2. and the rules of the book of rates which were part of that, as no duty outwards grows due before shipping, so no duty inwards grows due before unlading. So that the unlading

unlading is the beginning of the duty inward at this day, and during the continuance of the subsidy of tunnage and poundage now in force.

Although, as I have before observed, the king hath the duty itself vested in him by the act, for which he may sue without demanding the penalty, yet the statute hath provided a more effectual remedy for the king's duty, viz. forfeiture of those goods for which custome is due but substracted. And the ordinary means at this day for the king's relief in case of such substraction is to inform for the forfeiture of those goods of which the custome is so substracted.

The great clause upon which this forfeiture depends is this *.-" If any wines, goods, or other merchandize, whereof the subsidies aforesaid are " or shall be due, shall at any time after be shipped or put into any boat " or vessell, to the intent to be carried into the parts beyond the seas, or es else be brought from the parts beyond the seas into any port place or " creek of this realm, or other your Majesty's dominions, by way of merchandize, and unshipped to be laid on land, the subsidy customes and other duties due or to be due for the same not paid or lawfully tendered to the collector thereof or his deputy, with the consent and agreement of the comptroller and furveyor there or one of them at the leaft, nor 44 agreed with for the same in the custom-house, according to the true " meaning of this act; that then from the faid 24th of June all the same " wines goods and merchandizes whatfoever shall be forfeit to your majesty, "the one moiety of the rate thereof to your majefty, and the other " moiety to him or them that will seize or sue for the same."-By this clause all the great questions concerning the subsidy of tunnage and poundage are guided; for during the continuance of this subsidy no other customes are on foot, but all suspended, as hath been shewn by the express provision of the last rule in the book of rates. And therefore I shall somewhat largely examine this clause and the several parts of it.

I. In referrence to customes outwards there will be these questions:

- (1.) What shall be said a shipping or putting into any boat, to the intent to be carried into the ports beyond the sea.
- (2.) What shall be said goods or merchandizes so shipt, whereof any subsidy shall be due.
- II. In referrence to goods imported:

* 12. Cha. 2. c. 4. f. 3.-EDITOR.

- (1.) What shall be said goods or merchandizes imported, whereof any subsidy is or shall be due.
 - (2.) What shall be said an unshipping to be laid on land.

III. In referrence to the payment:

- (1.) What shall be said a payment, what a tender, what an agreement within the intent of this act.
 - (2.) Who shall be said a collector within this act.

IV. In referrence to the forfeiture:

- (1.) What the forfeiture is, or when, or how it begins, or is confummate.
- (2.) What is a seizure, and who a seizor, within this act, to be intitled to the moiety.
- I. Touching the first of these, viz.

(1.) What is a shipping to be transported beyond the sea.

If goods are laid into any boat or lighter or bottom, to be carryed to any ship in or out of the port, to be from thence carryed into the parts beyond the sea, the first lading into that boat or vessell the customes unpaid gives the forseiture.

If goods are laden into any port in England to be transported into Ireland or Scotland, this is a loading to be transported beyond the sea; though Ireland be part of the dominions of England; because it is a different kingdom, and the customes are due here, though the customes being paid here, they ought not to be charged with other customes in Ireland.

If goods are laden aboard in any port in England Wales or Berwick, they are not to pay any customes or duties outward or inward. But then they ought to have a coast-cocquett, and give security to unlade at such a port, and bring back to the lading port from the port of discharge within six months a certificate that the goods are accordingly unladen there. Vide statute 14. Car. * concerning the customes.

(2.) What fhall be faid goods or merchandise.

The wearing-apparell of any passenger, nor the goods or furniture of any embassador or servant of the king or other forreign minister for his ordinary use, and not for traffick or merchandise, are not goods or merchandises chargeable with these duties. Yet to prevent deceit on the one side or danger of seizure on the other side, these goods are not laden nor unladen without a bill of sufferance from the officers of the customes. The furniture, wictuall, table, ammunition, or apparell, for the ordinary use of the ship, and

13. and 14. Cha. 2. c. xi. f. 7-EDITOR.

not for trade or fale, are not goods or merchandise chargeable with custome outward or inward.

II. In referrence to goods imported:

(1.) What are goods or merchandises imported by way of merchandise.

Something of this hath been said immediately before, which need not be repeated.

If a ship and goods be driven into a port by soul weather or by some leak of the ship, whereby the merchants are ensorted to land their goods for saving them, or the necessary repair of the ship, but with intent to relade them again; this is no such an unlading as to intitle the king to the customes. Yet, for the security of the king against deceit and the merchant from the danger of seizing, it is safe and fit for the king's officers to be acquainted with the unlading, and to suffer a bill of sufferance to be gotten, if the exigence of the occasion will permit.

If goods be taken upon the sea by way of reprisal or prise, and brought into a port in England, they ought to pay the duties; for they are imported for sale, and so by way of merchandise. And so it was resolved in 38. 39. Eliz. in scaccario, n. 67. Howell and Hall.

The same law seems to be for goods taken up by the lord of any manor or other seized as wreck, or seized upon the sea by the admirall or his de-

puty, as flotson jetson and lagon.

The prisage of wines, viz. a tun before the mast and a tun behind the mast, ought not to pay any tunnage or other subsidy, though the king hath lett them to farm. For a custom shall not be paid of a custome; both duties are the king's, and the king shall not pay a custome to himself; and though the prisage be lett to farm, the farmer hath it still in right of the crown, and therefore he shall pay no tunnage for it. And accordingly it hath been often resolved. But otherwise possibly it may be, if prisage be claimed by a subject by prescription or charter.

The freemen of London and barons of the cinque ports ought to pay full custome and subsidy of their wines, though they have a discharge of prisage by the king's charter, and so in manner claim the same under the king's grant. And this is clear, because though it be a grant by the king, yet it is

a grant by way of discharge.

(2.) What shall be said to be an unshipping to be laid on land.

If a ship laden with salt or other foreign goods come into any port of England, and there sell her lading to any other ship in the same port to be transported beyond the sea, and accordingly the same is unladen into that other ship and transported; though these goods were never brought on land, yet,

inasmuch as this is done in the port, this is an unshipping to be laid on land within the construction of this act, and the king should have a double custome, viz. a custome inward and a custome outward in that case. And accordingly it was resolved, 34. Eliz. in scaccario, in a case cited per Walter in Swinerton's case. Vide Comment. 7. per Gawdy.

If a ship come into a port and unlade part of her lading to be disposed of by way of merchandise, at common law custome was to be paid for the whole lading; but at this day no more shall be customed but what is landed, as hath been shewn in the last chapter.

If goods be unladen by mistake of the merchant his servant or mariner, this is not such an unlading as will give a forfeiture, if the customes were not paid for the same.——The case was a merchant having consigned unto him a barrell of thread in one ship and a barrell of coarse inckle in another, but the marks in the invoice mistaken, he enters the inckle and pays his custom for it, but by the mistake of the marks takes up the thread instead of the inckle, which being landed and opened by the land-waiter appeared to be thread, and was thereupon seized as forseited. But because it appeared to be a mere mistake, it was ruled upon evidence to be no forseiture. But if upon the circumstances it had appeared to be done by design to save the customes of thread, which were greater than the others, then it had been a forseiture. And therefore the circumstances govern in this case.

By the 27. E. 3. st. 2. cap. 19. no merchant is to lose or forfeit his goods for the trespass or offence of his servant, unless it be done by the command or procurement of his master, or that he hath offended in the office in which his master hath sett him, &c. and most of the pleas in the time of E. 4. H. 6. &c. in discharge of forseitures for non-payment of customes, were grounded upon this act.

III. In reference to the payment of customes.

(1.) What shall be faid an agreement within this act.

If the merchant having a parcell of goods to unlade which pay customes by weight; but before he doth know the certain weight thereof, and before the goods unladen, it is agreed between the merchant and the collector with the consent of the comptroller, that he will pay what is due, when the same is weighed; and thereupon the goods are unladen, though without a bill of sufferance, and seized; this is a good agreement within the act to excuse the forfeiture, and accordingly adjudged in the Comment. 1. Fogassa's case, because reducible to certainty.

(2.) Who shall be said such an officer with whom such agreement may be de.

An unlading of goods, by the confent of the land-waiter, tidesman, or fearcher, is not such an unlading by agreement required in the act; for these are not officers authorized for that purpose; for the statute is, that the agreement ought to be with the collector by the consent of the comptroller and surveyor or one of them.—And here note, that in every port of England there are a collector * and a comptroller, but only in the port of London a surveyor; and these are officers by patent of the king.

If there be a collector or comptroller de facto, though he be not such de jure, yet an agreement with such an officer is good; for the merchant cannot take notice of the title of the officer.

A collector in the port of S. makes B. his deputy, who makes C. his deputy. A merchant importer agrees with C. and the comptroller to answer all customes which should be found due upon the view of the goods, Ruled, that this is a good agreement, though at first uncertain, and though made with one that was a deputy of a deputy.

IV. As to the point of forfeiture.

(1.) Though a title of forfeiture be given by the lading or unlading the custome not paid, yet the king's title is not compleat, till he hath a judgment of record to ascertain his title; for otherwise there would be endless suits and vexations; for it may be, ten or twenty years hence there might be a pretence of forfeiture now incurred.

The king's judgment is upon an information, which may be either for the king alone, or for the king and informer; and these informations are of two kinds, viz.

An information without a seizure, where the surmise is, that goods uncustomed came to the hands of the desendant; wherein if the desendant be convicted, he answers the value of the goods.

Or else an information upon a seizure, which is against no person certain; but the party, that seizeth the goods as uncustomed, prefers an information in the exchequer, praying that the goods may remaine forseit; upon which there goes out a writt to appraise the goods, and upon the return of the appraisement proclamation is made, that if any man will come in he shall be heard. If upon or before this proclamation, the owner will come in and claim property and plead, he may thereupon have the goods delivered upon

[•] Antiestly the customer and collector were one and the same officer; and so they seem to have been in lord Hale's time. But now in some ports, as in Bristol, there is both a customer and a collector. See Crouch's Compleat Guide to Officers of the Customs 2. and 4—EDITOR.

fecurity, if the same be bona peritura. But if none come in to plead to the forseiture, judgment is given that the goods remain forseited. And thus judgment concludes the party's interest; and it is but reasonable it should do so; for he hath notice of the suit,

1. By the seizure.

2. By the appraisement, which is publickly done in the custom-house by the king's writ.

3. By the proclamation in that court, which is known to be the publick place, whereunto all matters of this kind do come; for no information of this nature lyes in any other court in England. The king may inform upon a devenit in what court he pleases. But there cannot be an information upon a seizure thus to condemn goods by proclamation, but only in the court of exchequer; and the reason is, because upon all such seizures every person concerned may have and know a certain place to resort unto for his remedy in this kind.

(2.) Who may thus seize and inform upon a seizure.

At common law any person might seize uncustomed goods to the use of the king and himself, and thereupon inform for a seizure. But yet if A. seize goods uncustomed, and then B. seize them for the same cause, he that strict seizeth ought to be preferred as the informer. And therefore if B. that seized after, first inform, and A. also inform, A. may be admitted to interplead with B. upon the priority of the seizure, before the merchant shall be put to answer either.

But now by the statute of 14. Car. + for regulation of all customes, none are to inform for non-payment of customes, &c. but such as are authorized by the treasurer, chancellor of the exchequer, or farmer of the customes.

If the king grant to the admirall all derelicted goods found in the fea, flotson, jetson, &c. and a merchant exports tynn uncustomed, and to save the forfeiture and seizure casts it overboard near the port; though this as to some purposes be derelict jetson, and therefore if there were no more in the case would belong to the admirall against the king by virtue of this grant, yet, inasmuch as the king hath a title to this as forfeit for non-payment of customes, which title is not granted over, the king shall hold those goods notwithstanding the grant to the admirall. And upon this account a prohibition was granted to the admirall court in this court ‡ to stay their pro-

^{*} See as to this matter 13. and 14. Cha. 2. c. 11. f. 30.- EDITOR.

⁺ See 13. and 14. Cha. 2. c. 11. f. 15. and 17.- EDITOR.

[†] The MS. is deficient in not mentioning what court. But the court of exchequer is plain-

ceeding there to condemn those goods as jetson for the duke of York, lord high admiral. P. 17. Car. 2.

And thus much shall suffice for this clause of the act of tunnage and poundage, which is of daily use, and explains much of this business.

C A P. XXIII.

Concerning the times and places for lading and unlading goods.

BY the statute 1. Eliz. cap. 11. every person, that is to lade or unlade any merchandize into or out of any ship between the first of March and the last of September, ought to do it between sun rising and sun setting, and from the last of September till the first of March between seven in the morning and sour in the asternoon, upon pain of forseiture of the goods.

After due entry and agreement made with the customers, a ship, inwards bound, between the last of September and the first of March, unlades her goods into a lighter about twelve of the clock at noon, which come to shore aqua inde refluxa about two of the clock, and the goods are unladen after four o'clock. Ruled, that, inasmuch as the bringing to shore aqua inde refluxa was before four of the clock, this was a discharging and laying on land before four of the clock within the statute; and so the forfeiture saved.

M. 38. 39. Eliz. in scaccario. Howell and Hall, Crook n. 67.

As that statute provides for a forfeiture upon the merchant in case of shipping or unshipping at prohibited times, so the statute of 14. Car. 2.

gives a penalty of rool. against the wharfingers and bargemen.

The statute of the 1st Eliz. as it limits the times of lading and unlading, fo it limits the place under the like penalty of forfeiture of the goods, viz. at such keys wharfs and places as the queen shall appoint by commission before the first of September, in the ports of London, Southampton, Bristoll, Westchester, Newcastle, and the suburbs thereof, and in some open place key or wharfe in all other ports creeks havens or roads, Hull only excepted, where a customer comptroller and a searcher or the servants of some of them have been by the space of ten years last past accustomably resident ‡.

[•] Leak and Michel for themselves and the queen v. Howell and Hall Cro. Eliz. 533 -

⁺ See 13. and 14. Cha. 2. C. 11. f. 7 .- EDITOR.

^{1 1.}Eliz. c. 11: f. 2.-EDITOR.

And by the statute of 14. Car. 2. * for the regulation of the customes, power is given to the king, by commission to assign other places or ports (Hull excepted) for lading and discharging of ships, and also to sett down and appoint the extent bounds and limits of ports; and it is enacted, that no person shall lade or unlade merchandizes imported or to be transported, but only in such open keys, &c. as shall be so assigned, without special sufferance first had from the commissioners and officers of his Majesty's customes, upon pain of forseiture of the goods.

If a ship bound for Yarmouth or Newcastle pass along the Downs by Dover, and it is to unlade goods by the way, in strictness of law he ought to come into the port and there make her unlading and entry. But, because oftentimes the ships unlade in transitu, and cannot conveniently come into the port, if the merchants give notice thereof to the officers of the custom-house timely so that they may have opportunity to examine the goods before they are landed, this hath been constantly allowed in favour of the merchant. But if he doth it by surprize and deceit to deceive the king of his customes, it is a forseiture of the goods; and the circumstances of the manner and secrecy and unreasonableness of bringing in the goods are an evidence to prove such deceit.

And thus much for the times and places of lading or unlading goods imported or to be transported.

C A P. XXIV.

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Touching repayment of customes or duties once paid, upon emergencies.

BY the common law, if a merchant had once paid his customes outwards, though the goods were lost before they came to their port of discharge, there was no remedy to have them repaid, but by a petition of grace to the king, upon which nevertheless the same was frequently granted, viz. that he might ship out as much goods as the loss amounted to custom-free.

But because of the charge and trouble of obtaining mandates or grants under the great or privy seal for that purpose, of latter times provision hath been made by the act of tunnage and poundage, that the merchants shall have that allowance upon proofe thereof made +.

^{* 13.} and 14. Cha. 2. c. 11. f. 14.-EDITOR.

⁺ Sect. 4. of the 12. Cha. 2. c. 11. contains a provision of this fort .- EDITOR.

And also by the book of rates there are several rules for the encouragement of trade, for allowance, sometimes of the half custome, sometimes of the third part, and other allowances in cases of exportation of forreign goods within certain times, which are needless to be repeated, because they are all sett down there at large.

And divers allowances are made by the fame rules, viz. they fix what shall be allowed custom-free for wrappers or package, what shall be allowed in wines for outs, that five per centum be allowed upon all goods, and what shall be allowed for leakage twelve pounds per centum.

Touching that allowance it was ruled 15. Car. 2. in scaccario that a merchant importing wines may, if he please, fill up his wines that are imported and in the port, and pay custome for full tunns and hogsheads or pipes. But if he shall so fill up, he shall not have allowance for leakage. And the reason is, because the allowance for leakage was at first by contract or capitulation between the king's officers and the merchant, viz. to have so much allowed in respect of the leakage and decay of his wines between the lading and importing of them; and in that very capitulation there was provision, that the merchant should not fill up his vessells, if he would have the allowance of 12l. per cent; and as it is continued by the same name, so it is continued upon the same account, viz. if the merchant will custom his wines by the vessell or cask, he shall have the allowance; but if he will custom by the content, he shall not have that allowance. And accordingly it was resolved Car. 2di.

C A P. XXV.

Concerning the customes of Newcastle coals, its original and progress.

I appears by the parliament roll 9. H. 5. n. 35. inter petitiones communitatis, that the king was answered two-pence per chaldre for every chaldron of coals sold in Newcastle to those that were not free of the town of Newcastle; and thereupon commissions are directed to be issued to examine the quantity of the keels, in which such coals were laden, which should contain just twenty chaldron; and accordingly the king's duty was answered, viz. 3s. 4d. for every keel, though they were oftentimes larger, whereby the king was deceived.

The

The mayor and burgeffes of Newcastle obtained a charter in H. 6. and by the general words they claimed this two-pence per chaldron as a toll, though the words of the charter seem not to carry it.

Yet under the pretence of this charter they enjoyed the same as a toll from the buyer, and employed it by their oastmen towards the repair of their bridge and port, as appears by an inquisition taken in the H. 6. and their constant usage ever since; and because it was at least doubtful whether the words of their charter carryed it, they claimed it by prescription. See the suit, as I take it, in the exchequer-chamber by Duncomb and others plaintists against the mayor and burgesses of Newcastle touching that duty of two-pence per chaldron.

About 40. Eliz. they were questioned at the council-table by one Hill for the same, and for the arrearages of the same as due to the crown. But upon proof of a long payment for fifty years to the mayor and burgesses, the petition of Hill dismissed.

Yet the mayor and commonalty, being awakened by this, for their better fecurity in 42. Eliz. renewed their charter, got these duties confirmed to them, and the arrearage discharged; and in compensation thereof granted to the crown twelve-pence per chaldron for every chaldron of coals exported and fold.

In the parliament 1. Car. a bill was twice read and committed for the revesting of the said two-pence per chaldron to the crown; but it came to nothing.

Although upon a strict examination such a grant could not charge any other interest but their own, and men were much distaissed therewith *; yet the payment of twelve-pence per chaldron to the crown continued, though with some dissatisfaction.

But in the bill of fubfidy and tunnage + and poundage, among the rules given touching the same in the end of the book of rates, wherein there is a special provision for the discharge of all other duties to the king upon goods imported and exported other than the duties settled by that act, there is an exception of prisage and of this duty of twelve-pence per chaldron ‡.

In 1655 a book was published on the subject and addressed to Oliver Cromwell. It was intitled, "England's Grievance in respect to the Coal Trade," &c. "by Ralph Gardiner, of Christen in the county of Northumberland, Gent." The book is scarce, but may be seen in the collection of printed books at the British Museum.—Editor.

^{+ 12.} Cha. 2. c. 4.- EDITOR.

[†] The words of the exception are very strong, viz. "Nevertheless it is declared, that prizage of wines, the duty called butlerage, and the duty of twelve-pence of every chalder
of sea-coals exported from Newcastle upon Tyne to any other port or ports of this realm
stable be continued."—EDITOR.

By this exception that duty becomes now fettled and unquestionable *; the farm whereof is well worth to the crown fix thousand pounds per annum.

And by the late act of parliament for the rebuilding of the city of London there is a further fum of twelve-pence per chaldron imposed upon all coals imported into the port of London above the duties formerly due.—And, thus stands the state of the customes for coals at this day, viz. 29. Mariii 1667.

C A P. XXVI.

A general discourse touching the customes of clothes as well exported as fold within the kingdom; and therein concerning almage.

THE customes of clothes were anciently and are at this day of two kinds, viz. the custom of clothes exported by way of merchandize, and the custom of clothes sold within the kingdom, or the subsidy of alnage. I will examine them both together in this and the ensuing chapter, that so the whole business concerning the duties upon cloth may be laid open to one entire view.

I. Touching the custom of clothes exported, this hath been in a great measure finished in the ninth chapter, wherein the several instruments touching the same are recited, to which I shall often referr, and this shall be but a kind of extract of that business.

The customes or impositions upon clothes exported were of two kinds or originals, viz.

(1.) That which began by force of the Carta Mercatoria, which was for clothes exported by aliens.

^{*} Before the 12. Cha. 2. two circumstances had occurred, tending to confirm the duty upon coals at Newcastle.—1. In the petition of grievances addressed by the house of commons to James the first in 1610, one chief aim of which was to condemn imposition at the ports by prerogative, this duty is distinguished from those they complain of, because it began by contrast and grant, and not under a mere pretext of the royal prerogative, as they represent the one shilling duty then payable on coals at Blythe and Sunderland to have commenced. See State Trials, vol. xi. page 65.—2. The statute of 21. James 1. c. 3. against monopolies contained a provision favour, as well of the privileges of selling and carrying coals at Newcastle exercised by the fraternity of hoast-men there, as of the duty of one shilling per chaldron for coals, which they granted to the crown in consideration of that privilege. See 21. James 1. c. 3. s. 12.—

BDITOR.

- (2.) The second was that which began by imposition about 20 E. 3. as well on denizens as aliens.
- (1.) Touching the former of these, viz. those sett by Carta Mercatoria, the copy whereof is inserted supra, cap. 7. * they were these:

. 2s. of every cloth of scarlet or dyed with grain,

15. 6d. of every cloth in which there was part grain,

1s. of every other cloth without grain.

And these customs charged all allens, whether they were the merchants of the Hanse or others, and seem to extend as well to clothes imported as to those exported.

But this extended only to whole clothes; for if only parcells were to be exported, or that cloth was cut into garments and so exported, aliens paid only their poundage as for averdupoise, viz. 3d. for the value of every 20s.

But to remedy this by the statute of 11. H. 4. above mentioned, cap. 8. aliens were to pay their customes by Carta Mercatoria, and also the impost or custom sett 21. E. 3. hereaster mentioned, proportionably and rateably for such pieces of clothes and garments in proportion to whole clothes.

And sometimes they paid for the same pieces also their poundage over and besides; but this was sometimes remedied.

The Hanse merchants did sometimes pay for these pieces as other merchants strangers; but in the time of king E. 4. when their privileges were revived and savored, they paid only their poundage for garments and pieces of clothes, inasmuch as they were to enjoy the privilege of Carta Mercatoria, and were not to be charged with new customs or impositions; and such was this reckoned, viz. to pay rateably for pieces of clothes and garments.

(2.) The fecond duty upon clothes was that which began by imposition in the time of E. 3. and had the countenance of a confirmation by parliament 21. E. 3. as appears by the petition and answer concerning the same, mentioned supra, cap. 9. + and carried with it this equity, that whereas the king had a custom of inheritance settled in him of woolls exported, viz. of every sack of wooll exported 6s. 8d. and of aliens by Carta Mercatoria of 4od. in toto 10s. and about 20 E. 3. much of the wooll of the realm was draped into cloth and exported in that manufacture, it was thought just, that the king should have a proportionable benefit of wooll exported in manufacture, as if exported in specie. And upon the reasonableness of that construction that duty was settled and imposed, and hitherto continued with some alterations; viz. there was imposed 20. E. 3.

^{*} Ante, p. 157.- EDITOR.

⁺ Ib. p. 166, 167.—EDITOR.

1. Upon every woollen cloth without grain exported,

By denizens - 14d. By aliens - 21d.

2. Upon every cloth of worsted exported,

By denizens - 1d.
By aliens - 1d. ob.

3. Upon every bedd of worsted exported,

By denizens - 10d. By aliens - 15d.

This bears some proportion to the custome of woolls. But this was not all; for in a little while they took consideration of the various values of cloth, not only in respect of the materiall, but in respect also of the species of the cloth. And in that respect the imposition upon clothes without graine indeed were at 14d. for denizens and 21d. for aliens, viz. a third part more according to their different proportion of customes of wooll. But shortly after there was this addition,

1. Upon a cloth of whole grain or fearlet exported,

By denizens - 2s. 4d.

By aliens - 3s. 1d. and after that 3s. 6d.

2. Upon a cloth of half grain exported,

By denizens - 21d.
By aliens - 2s. 7d.

It rested thus for the most part of E. 3. and R. 2.'s time and downward to the time of E. 4. only as is before shewn cap. 9. it was extended to new manufactures in the same proportion, as to kerseys Rot. Parl. 15. R. 2. 2. 43. to clothes made into garments stat. 11. H. 4. cap. 7. to Cornish and Devonshire cloths called streits Rot. Parl. 2. H. 5. par. 1. n. 39.

In the 2d year of E. 4. the rates of the customs for cloth run thus, viz... Of every cloth of affize or whole cloth exported,

By denizers - 14d.
By aliens - 21d.

Of every cloth of scarlet or whole grain exported,

By denizens - 2s. 4d.

By aliens - 3s. id. and afterwards 3s. 6di.

Of every cloth of half grain exported,

By denizens - 21d. By aliens - 2s. 7d.

And over and besides these rates, the aliens paid their customs for clotheset by Carta Mercatoria, viz. 12d. for a cloth without grain, 2s. for a cloth

of whole graine or scarlet, and 18d. for a cloth of half graine; but they paid no poundage, viz. 3d. per lib. for these clothes.

But the Hanse merchants, some time in the time of E. 3. were contented to pay the imposition custom upon clothes, according as other merchants did, and were acquitted of the custom sett by Carta Mercatoria. But afterwards, especially in the time of E. 4. they took advantage of their revived privileges, and were thereupon discharged of all those imposition-customs upon clothes, and only answered the custome sett by Carta Mercatoria, viz. two shillings for a cloth of whole graine, 18d. for a cloth of half graine, and 21d. for a cloth without grain,

But besides this imposition upon clothes thus inhaunced in the time of E. 4. the impositions upon worsteds were also inhaunced, viz. 1. On pieces of worsted.

2. On bedds of worsted.

1. For pieces of worfted.

For a fingle piece of worsted exported,

By denizens ____ 2d.

By aliens — 3d.

For a double piece of worsted exported,

By denizens — 2d.

By aliens _____ 3d.

2. For bedds of worsted exported,

Single bedds exported,

By denizens _____ 5d.

By aliens - 7d. ob

Half doubles exported,

By denizens — 7d.

By aliens ___ 10d.

Doubles exported,

By denizens - rod.

By aliens - 13d. ob.

But besides all these imposed customes, the aliens paid their 3d. per pound upon all sorts of worsteds by virtue of Carta Mercatoria. Only the Hanse merchants of the Stillyard in the time of E. 4. paid only 3d. per pound upon all sorts of worsteds by Carta Mercatoria, and were discharged of the imposed customs upon worsteds by virtue of their privilege which was then revived: only they were charged by some composition, as it seems, with 2d. for every piece and bedd of worsted, besides their poundage by Carta Mercatoria.

And thus stood the customes upon cloth by imposition till the time of queen Mary; during all which time it is observable, that the proportioning of the custom of cloth, both upon aliens and denizens, was not with regard to the value of the subsidies upon wooll, which were sometimes very great, but only with regard to the old custom of woolls of half a mark upon deni-

zens and ten shillings upon strangers for a fack of wooll.

Queen Mary had the subsidy upon woolls granted for her life, viz. 33s. 4d. of English, 3l. 6s. 8d. of foreigners, besides the old customes of wooll, which amounted to 40s. upon English, 3l. 16s. 8d. upon foreigners. And by a decree of the council 4. and 5. P. and M. before mentioned *, there was an inhauncing of the old imposition on cloth in some proportion to the subsidies and custom; viz. they computed four short cloths to answer a sack of wooll, and thereupon sett an imposition in some proportion, though not sully answering the custom and subsidy of a sack of wooll, viz. upon English 6s. 8d. for every short cloth which amounted to 26s. 8d. for four cloths, and upon aliens 14s. 6d. which for four clothes came to 58s. which was short of the subsidy for a sack of wooll.

And proportionably the customes of kerseys, streits, &c. were reduced in

proportion to the broad fhort clothes.

Thus the imposition or custom upon clothes continued till 2. Jac. at which time the king having the like subsidy of woolls granted him, viz. 33s. 4d. by English, which together with the old custome of 6s. 8d. amounted to 40s. and 3l. 6s. 8d. of forreigners, which with the old custome amounted to about four pounds, it was found, that the customes formerly taken upon clothes did not amount to the proportionable subsidy of wooll; and therefore the custom or imposition upon every short cloth of denizens was reduced to 10s. and the like rateable proportion increase made upon clothes. exported by strangers answering their subsidy and custome of woolls, which were called pretermitted customes.

This, with various complaints and fome intermissions, was taken in the

time of king James.

At this day by the act for tunnage and poundage, the cufforn or subfidy of cloth exported is reduced to 3s. 4d upon English, and 6s. 8d. upon for-reigners; and so it stands at this time +.

And thus far of the cultoms and impolitions of cloth exported 1.

* Ante, chap. 14 .- EDITOR.

[†] The 11. and 12. W. 3. c. 20. took away all duties payable by any previous statute or law whatever on the exportation of English woollen manufactures. See sect. 1.—EDITOR.

t Such as are curious to go further into the subject of the duties upon elothes exported, may be fully gratified by consulting those two most elaborate histories of trade, Mr. Smith's Memoirs of Wool, and Mr. Anderson's Chronological Deduction of Commerce,—EDITOR.

C A P. XXVII.

Concerning the Subsidy of alnage.

CONCERNING the inland custome of clothes, which is alnage, shall be my next enquiry.

It is certain, that antiently, especially in the times of H. 2. R. 1. and the beginning of king John, there was a great quantity of woollen cloth made in England. This appears, 1. By those many guilds and fraternities of weavers erected in most of the considerable towns and cities in England with large privileges, and that answered good fee-farm rents to the crown. 2. By the antient affises sett for the length and breadth of woollen clothes, whereof hereafter.

But it is likewise true, that in the long civil wars, especially in the time of H. 3. the manufacture was almost lost, but revived again gradually, till the beginning of E. 3. when it arrived to a reasonable condition, for so the records before mentioned touching the imposition upon clothes exported tell us, that magna pars lange pannificatur; and by the statute of 11. E. 3. cap. 3. the importation of foreign clothes was wholly prohibited.

This will be found a necessary precognition to the history of the subsidy of always intended in this chapter.

I shall therefore confider and examine these three matters, in order to the full discovery of this business:

I. How the case stood antiently and in succeeding time in reference to the length and breadth of cloth; for ulnagium, or aulnage, or alnager, is a term of relation to the common measure of cloth by the ell or ulna.

II. I shall consider how the office of the aulnager stood in antient and succeeding times.

- III. I shall in the last part confider the subsidy of alwage itself, its beginning and progress, and to what it extended.

I. Touching the measure of cloth,

Itappears by Roger Hoveden fol. 774. that in the time of R. 1. there was a certain affize of the breadth of clothes, viz. Panni Lanei ubicunque fiant, fiant de eadem latitudine, viz. de duabus ulnis intra lifuras, et ejusdem bonitatis in medio et lateribus, sub pana forisfactura. In the time of king John upon the perition of the merchants that affize was repealed. Hoved. 822.

By the great charter 9. H. 3. cap. 25. the former assize for breadth of woollen clothes, tinstorum russatorum et baubergettorum, scilicet due ulne

inter

inter lisuras. And accordingly the affize of cloth was proclaimed, Claus. 22. H. 3. m. 12 dorso custodibus Nundinar' Sancii Botolsi.

But the ensuing troubles in the reign of that king caused much interruption in trade; and besides this assize extended only to the breadth, not the length of clothes.

King E. 1. in the fixth year of his reign makes a new and fuller provision for the affize of cloth, and reinforceth a proclamation made by his father in the 56th year of his reign, viz.

1. Quòd quilibet pannus Angliæ, cujus ulna valet quatuor folidos et ultra, fit latitud nis 2 ulnarum inter lisuras.

2. Alii panni vilioris et minoris pretii sint 7 quarteriorum secundum assisam antiquam.

3. Quilibet pannus de partibus transmarinis, qui sit de duabus sedibus, sit longitudinis 26 ulnarum et latitudinis sex quarteriorum inter listas.

Et quòd omnes panni predicti, tam cismarini quam transmarini, qui non sunt longitudinis et latitudinis predict be seized into the king's hand, exceptis assais partium transmarinarum Scotiæ et Hiberniæ, de quibus certa mensura non babetur.

This is entered upon the parliament roll of 25. E. 3. n. 49. But yet it feems this did not limit any length to English clothes.

By the statute of Northampton 2. E. 3. cap. 14. all clothes put to land shall be of the measure following, to be measured by the king's aulnager, under pain of forseiture, viz. every cloth of ray 28 yards long, 6 quarters broad; every coloured cloth 26 yards long, and 26 quarters and a half broad.

But this extended only to foreign clothes imported.

By the statute of 25. E. 3. cap. 1. the same assises are settled upon all clothes found with any merchant under pain of forseiture; and the king's aulnager to measure them.

Rot. Parl. 25. E. 3. n. 44. a repeal of that statute is defired. All that it obtained was an act, that the aulnager should only measure whole clothes.

Then ensued the statute of 27. E. 3. cap. 4. touching the alnage, whereof properly hereafter.

By the statute of 47. E. 3. cap. 1. clothes of ray to be made in England, to be 28 yards long, and fix quarters broad; coloured clothes to be 26 yards long, and fix quarters at least broad; under pain of forfeiture.

By the statute of 17. R. 2. cap. 2. every man may make his cloth of what length and breadth he please, paying his aulnage pro rata; but none to put his cloth to sale before measured by the king's aulnager. This is after in

part

part repealed by the statute of 5. E. 6. as to the length and breadth of clothe.

By the statute of 7. H. 4. cap. 10. coloured clothes and clothes of ray are to be of the same length and breadth as is appointed by the stat. of 2. E. 3.

By the statute of 11. H. 4. cap. 6. a new seal ordained for the aulnager on whole clothes and dozens.

By the statute of 11. H. 6. cap. 9. it is declared, that the word cloth in the statutes of 7. and 11. H. 4. are only intended of broad cloth and broad dozens; and not of clothes called streits, which may be 14 yards long and one yard broad, paying the subsidy pro rata, and not to be put to sale till measured by the aulnager.

By the statute of 4. E. 4. cap: 1. a measure and seals appointed for half clothes streits and kerseys.

The statute of 17. E. 4. cap. 1. alters that way of sealing in respect of the king's loss of his aulnage.

After this there follow several acts of parliament limiting the weight and measure of several clothes of several countries and natures, viz. 34. H. 8. cap. 11. 5. and 6. E. 6. cap. 6. 2. and 3. P. M. cap. 12. 4. and 5. P. M. cap. 5. 8. Eliz. cap. 7. 27. Eliz. cap. 17. and lastly 4. Jac. cap. 2. whereby, among other things, the estimate of the length of a broad cloth is to be 24. yards, and according to that estimate of length the duties to be answered.

And thus stands the measure of clothes according to the various proportions settled by these acts; which is necessary to be known in reference to what follows, because it explains the same and the reasons of it.

II. The fecond thing which is to be examined is the aulnager's office, and incidents thereunto *...

(1.) By what appears, it is plain there was an officer of aulnager long before the statute of 27. E. 3. when the subsidy of alrage was first granted. And this appears by the very acts abovementioned, which anteceded the statute of 27. E. 3. Vide Ros. Parl. 13. E. 1. m. 2. the office of alrager over all England granted. And indeed it had been idle to have settled affizes of cloth, as is before mentioned, unless some common officer had been appointed to have looked after it, and after the king's forfeitures for not observing it.

The office therefore of almage was instituted first and principally in referrence to commerce and trade, to see that the buyer was not deceived by the seller; and as the clerk of the market was first appointed to prevent deceits in weights and measures, so was the aulmager in referrence to cloth and in referrence to the king to gather up his forseitures in cases of defaults.

(2.) To what it extends.—And i. it is extended only to cloth of wooll, and therefore not to canvas and linnen. And therefore when the king H. 4. granted an office of measuring of canvas with a certain see upon every cloth, it was adjudged both in the king's-bench and parliament, that the grant was void. Rot. Parl. 11. H. 4. n. 49. Rot. Parl. 13. H. 4. n. 43. T. 11. H. 4. B. R. Rot. 27. Cook on Magna Carta cap. 30. page 62.—And 2. it did not, neither doth extend to all manufactures of wooll. And therefore it was also, that when the king E. 1. granted the office of assay and meafurage of worsteds, it was repealed as prejudicial to the people, and that repeal affirmed and renewed Rot. Parl. 22. E. 3. n. 31.

And those manufactures of wooll, that anciently came not under any determinate measure, were not antiently within the almager's office, till reduced under the same. And some were appointed to be measured as well as to pay the almager's see, as streits and kerseys by the statute of 1, R. 3. cap. 8. and so of other short clothes by the statute of 17, R. 2. cap. 2. Of some he is appointed to take his sees, though he do not measure them, as rugges and Lancashire frizes by the statute of 8. Eliz. cap. 12. And generally at this day the almager doth not measure broad clothes; for he is inhibited from it by the stat.

* and yet by the statute 4. Jac. cap. 2. he is to take his sees, wherein a cloth of 24 yards long and 64lb, weight is made the standard and estimate of a broad cloth.

(3.) Touching his fees. They are fettled by the flatute of 27. E. 3. viz. for a whole cloth an half-penny, for half a cloth a farthing, to be taken of the feller; but for lefs than half a cloth he was to take nothing. But in enfuing statutes, especially that of 17. R. 2. cap. 2. where every one might make clothes of what length or breadth they pleased, it seems the almager's see was saved, and his office to be exercised, though there were no settled measure for cloth from that time till a long time after. And although at this day the almager doth not, nor in some cases may not, measure some forts of clothes; yet in all cases his rateable fee is saved; and regularly at this day in all cases, where the king may lawfully take his subsidy, the almager may take his fee limitted by the statute of 27. E. 3. Therefore the discussion of the king's duty will illustrate this.

III. Therefore I come to confider the fubfidy or duty of alnage.

This duty was first settled by the statute of provisors of 27. E. 1. cap. 4. by which act—1. The forfeitures accrued to the king for the want of due measure of clothes before that time are pardoned.—2. The office and see of

the almager are fettled and ascertained.—3. A perpetual duty to the king called the subsidy of almage was established and settled, viz.

		£.	s.	4
Of every cloth of affize wherein is no graine	-	0	0	4:
Of every half cloth wherein no graine -		0	0	2
Of every cloth of affize of scarlet on whole graine		0	0	6
Of every half fuch cloth		. 0	0	3
Of every cloth of affize half graine	TAR N	0	0	5
Of every half fuch cloth		. 0	0	2 06.

Every half cloth paffing the affife by 3 yards to pay as a whole cloth.— Where fubfidy is once paid, or for cloth made for a man's own use, nothing more to be paid.—Clothes sold before they are sealed by the almager to be seized as forseit wherever they are found.

Upon this act these things are considerable :

1. When this subsidy is due.—And regularly it is not due, but when the goods are sold; for it is to be paid by the seller.

But by the statute of 8. Eliz. cap. 12. the seal and alnager's fee is to be paid when carryed out of the county.

2. Of what quantities.—It feems this act extends only to whole clothes and half clothes by the letter of it. But possibly by a construction it may be extended to a rateable subsidy for smaller parcells. Yet quere; for there is provision made, that if it exceed the half cloth by 3 yards it shall pay for a whole cloth; which imports, that the makers of the law intended no rateable subsidy for parcells; for if it had, it would not have made provision in such manner for parcells.

But the statute of 17. R. 2. cap. 2. hereafter mentioned makes sufficient provision in this case for smaller parcells, and also the following acts.

3. Of what kinds of cloth.—The letter of this act extends only to whole and half clothes of affife. But this is remedied after by the statute of 17. R. 2. cap. 2. as shall be shewn.

By the statute of 51. E. 1. cap. 7. clothes not fulled are not to be exported, nor pay almage.

By the statute of 51. E. 3. cap. 8. no subsidy of alnage is to be paid of Irish cloth, nor cloth made of Irish wooll. But the reason seems principally to be in favour of the Irish manufacture, and because it paid before it's subsidy or custom upon it's exportation from thence.

4. The remedy for the duty is by the forfeiture of the goods unfealed; for now the almager's feal was not only a testimonial that the cloth was of Vol. I.

due affise, but also that the subsidy of almage was duly answered; and this forfeiture extends also by construction to those other forts of clothes, which by subsequent acts were brought within this duty.

The fecond and principall statute concerning the subsidy of alrage is that of 17. R. 2. cap. 2. whereby it is enacted, that every man may make and sell cloth as well kerseys as others of what length and breadth he please, paying the alrage and other subsidies and duties pro rata; but none to put to sale any clothes before they be measured and sealed by the king's alrager.

Upon which act these things are plain and observable :

1. That although the affise of the cloth was now in effect wholly taken away, yet the king's duty of alnage continued.

- 2. That consequently whatever the quantity of the cloth was that was exposed to sale, yet the seller was to pay a subsidy of almage pro rata for it.
- 3. That the forfeiture enacted by 27. E. 3. doth extend to the alnage due by virtue of this act.

But then the greater question, that hath been moved, hath been—(1.) Whether at least by virtue of this statute the new-invented draperies, as serges bayes perpetuanas and bayes, are liable to pay this subsidy or not.—(2.) If yea, then in what proportion.—And

- (1.) It hath been ruled, that they ought to pay this duty, which is made evident,
 - 1. By the statute of 17. R. 2. itself, which takes kerseys as well as other cloth to be chargeable with this duty; and yet kerseys were a new manufacture and not in use at the making of the statute of 27. E. 3. nor mentioned in it, but only clothes of assis.
 - 2. By the statute of 1. H. 4. cap. 19. provision is specially made, that kerseys, Kendal cloth, Coventry frizes, nor none other cloth or remnant of cloth of England or Wales, whereof the dozen exceed not 13s, 4d. pay no subsidy for three years; which were new manufactures and needed not this provision, if not liable to alnage. And when Rot. Parl. 9. H. 4. n. 34. a perpetual exemption of them from alnage was defired, it was denied. Only by the statute of 9. H. 4. cap. 35. Kendall clothes, whereof the dozen exceeded not 6s. 8d. are exempted perpetually from alnage. Vide stat. 7. Jac. cap. 10.
 - 3. By the statute of 11. H. 6. cap. 9. though clothes called streits are declared not to be cloth within the statutes of 7. and 11. H. 4. touching length and breadth of clothes, but any man may sell them at 14 yards long and one yard broad; yet they are to pay the king his alnage pro rata.

rata. The like appears for fireits and kerseys by comparing the statute of 4. E. 4. cap. 1. and 17. E. 4. cap. 5.

4. By the statute of 8. Eliz. cap. 12. Lancashire cottons frizes and rugges, though a new kind of manufacture, are chargeable with alnage and the alnager's fee.

5. Accordingly certified by the opinion of all the judges R. 2. Jac.

and so recited by Cook on Magna Carta page 62.

6. And accordingly resolved by the barons of the exchequer after seve-. Car. 2. Rex versus Sampson upon an information for Colchester bayes sold and the alnage not paid, and judgment pro rege that the bays were forfeit *.

But there was no opinion given by the court touching. Norwich stuffs made of worsted, wherein the judges in 2. Jac. seemed rather to be of opinion, that the alnage was not due for them; first because of the inconveniency in opening these stuffs; and secondly because never taken of these stuffs.

I shall only add some observables more in confirmation of that opinion touching the exemption of Norwich stuffs from alnage.

- 1. They were never under the office of the alnager, not subject to be measured by the king's officer; and when it hath been attempted, the patents have been repealed. Vide Rot. Parl. 22. E. 3. n. 31. Rot. Parl. 11. H. 4. n. 38. And fince the alnager's feal was the only or at least chief evidence of the payment of the subsidy, it is not likely, that any fuch stuffs should be chargeable with the duty that were not liable to the alnager's office.
- 2. By special acts of parliament, namely E. 4. + the regulation, search, and examination of Norwich stuffs, their goodness and measure, is put under another government. And hence it is, that, although most of the new manufactures of wooll are mentioned and regulated for their length and breadth in some of those several acts of parliament before mentioned; yet I remember no mention in any of them of Norwich stuffs or wools, as juli andle, as this the rations of single upon
- 3. Somewhat may be confiderable likewise in the manufacture itself. which differs from others; for there is not only a difference in the spin-

^{*} The case here cited was adjudged in Mich, 13. Cha. 2. and is reported in Hardr. 205.

^{. +} See 20. H. 6. c. 10. 23. H. 6. c. 3. 7. E. 4. c. 2. Epiton. the wood when the tracking the state, was to the track to

manufacture in it's very preparation before it be otherwise used.

It is true there have been contests about it in the court of exchequer, as also about dornix linsey-wolfey and knitt stockings, and informations directed and preparatives to it by depositing of the duty; but never that I find resolved, nor peaceably enjoyed. Vide inter decreta staccarii 3. Jac. 4. Jac. 6. Car. at the prosecution of the duke of Lenox.

But for other new draperies there feems to be fettled resolutions, or at least opinions, of that court, that they ought to pay alnage. In M. 3. 4. Eliz. Rot. 191. Mich. 32. 33. Eliz. Rot. 321. M. 39. Eliz. lib. Decretor' 262. Hall and Greathead, there are decrees directing and ordering the payment of alnage for new draperies; but none of these speak of Norwich stuffs.

- (2.) Touching the proportion that they are to pay, it may have a double respect.
- 1. To the quantity.—And the rule or measure seems to be this. By the stat. of 4. Jac. before mentioned, a whole cloth is estimated at 24 yards and 64lb. and according to that estimate it pays it's almage for a whole cloth, and in that proportion for part of a cloth. The proportion of almage for a cloth of assis without grain by the statute of 27. E. 3. st. 1. c. 4. is 4d. If therefore a pack of bayes weighs 64lb. it shall pay it's almage for a cloth of assis, viz. 4d. and so pro rata.
- 2. To the quality.—As by the statute of 27. E. 3. there be several rates of always for cloth without grain half grain and whole grain, so the rates will be accordingly diversified in stuffs, allowing as before 64lb. to be the weight of a whole cloth. And it hath been taken as to cochineal, that though a material for dying lately found, yet a cloth dyed with it shall be said in grain.

There remains this only enquiry, which I shall add to conclude this business.—Why was not the invention of Michollon for the pretermitted customes to be taken in cloth proportionable to the subsidy and custome of wools, as justifiable, as this the taking of almage upon new manufactures in proportion to the old; and how came it to pass, that the same judges, that condemned that as an unlawful imposition, justify this as lawful? C. M. Cart. 60. 61.

Paniwer, the difference is this. In the former case, the subsidy and custom lay upon the bare material, viz. the wooll; and therefore the translating it upon wooll when manufactured into cloth, was to transfer it upon an-

other

other kind. But alrage in its first institution was sett upon cloth, and the new invention of draperys is but a new species of the same germs; and both the new and the old agree in the common denomination of cloth; and if it should be otherwise, any little diversification of a manufacture should render it another thing, and so deprive the king of what was intended him *.

C A P. XXVIII.

Concerning things taken upon the Sea, and letters of marque and reprizall.

I SHALL conclude the whole discourse with something, that hath a cognation with maritime business; which, though it be not altogether proper to the business of customs, yet it may be worth the knowing, at least in relation to the business of trade, viz.

I. Touching prizes or taking of goods upon the fea in times of hostility.

II. Touching marque and reprizall upon injuries done in times of truce or peace.

I. Touching the former of these, viz. things or persons taken in times of hostility, wherein these things will be inquirable.

(1.) What shall be faid hostility +.

That is a time of hostility, when war is proclaimed by the king against a foreign prince or state. This and this only renders them enemies.

If there be warr between two princes upon the seas, and mutual fighting, as between us and the Hollanders at this day; although as between the sovereigns it is in many respects a sime of hollility, and therefore each doth take and confiscate the goods taken; yet to many purposes it is not a time of hostifity, especially in relation to the subjects of either side.

r. There is in such case no universal confiscation ipso facto, without an express mandate, of the goods found of either in the other's territory.

2. The receiving of subjects of the foreign prince or state is not ipso facto high treason, without some affistance given them in order to the warr.

3. The fubjects of either fide may not take the goods of others without commission, which is usually granted by the lord admiral. If he

Since ford Hale's time the fubfidy or duty of alnage has been wholly taken away. See at and 12, W. 3. c. 20. f. 2.—Entron.

† See on this subject 1. Hal. Hift. Pl. C. 160. to 164. - RD 1702.

doth affaile the foreigners ships otherwise than in his own defence without such commission, it is a depredation; for it is not a time of absolute hostility, in respect especially of the king's subjects, but qualified, viz. that commissions shall issue of reprisall to them that defire it; and this qualification is commonly in the proclamation that issues upon such occasion, although in truth there is another end of such commission, viz. that the parties employed in such acts of hostility as privateers may be known, and may secure the shares belonging to the king or admirall of goods taken, and may be responsible for any miscarriage at sea under pretence of hostility.

And upon this reason it is, that taking of goods by or from pirates comes not entirely under those laws, that concern capta per bosses vel ab bossibus. That which pirates take changeth not the property of the true owner, as it doth in case of an enemy; for such a taking is but a spoliation, and not a lawfull caption. 2. R. 3. 2. stat. 27. E. 3. st. 2. cap. 13.

(2.) The next enquiry is, what effects the taking of the goods of such

an enemy hath.

r. Regularly the goods of an enemy, that are found within the king's dominions, do not belong to him that finds them, unless they be taken by him more bostili; but they belong to the king as bona inimicorum, which is a prerogative belonging to the king, and was inquirable as one of the articles of the Eyre, viz. de cattallis Francorum vel Flandrensium vel aliorum inimicorum domini regis retentis, quia illa babeant.

2. But if the goods of an enemy were taken by force, either in a seafight or in battle upon the land, regularly by the antient law the goods became his that took them, viz. as soon as they were brought intra presidia, 2. R. 3. 2. And this was to encourage the valour and industry of the soldier. And on the other side, if an enemy take the goods of an Englishman, it changed the property, insomuch that if it were retaken again by another Englishman from the enemy, the property of the first owner was lost, and should not redire jure postliminii to him by the retaking of it by another. 7. E. 4. 14. 22. E. 3. 16. per Wilby. But it should seem by that book, and by other records, that if the enemy had not had the goods in his custody by one intire day and night, according to the custom of England, the first man's property were not lost; and therefore that if retaken by another within that time, the first owner was to be restored.—

Clause 26. E. 3. m. 22. The Castellan of Calais seised goods as wreck, which had been taken by a pirate (I suppose it was intended an enemy)

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from

from an English merchant non amotis servientibus disti mercatoris. The English merchant prays restitution, et quia dedusto negotio coram admirallo et consilio visum est eis, per legem maritimam bona per piratos capta super mare, que in manibus piratorum per unam diem et unam nostem non permanserunt, mercatoribus super eustodia earundem restitui debere: therefore restitution is granted.

3. But although this was the antient law, yet at this day, and indeed antiently, there are several constitutions, that do correct this translation of the property of the goods of enemies to the taker, and to avoid diforder and confusion some qualifications are introduced variously according to various times in case of goods taken by pirates or men of war from enemies, For-ift at this day, even in cases of hostility, private men of war must have a commission from the king or admiral -2d. There is a distribution made of the goods taken upon the fea by men of war, and in some cases also by merchantmen that take the goods of enemies in their own defence. Vide in Nigro Libro Admiralitatis, et Clauf. 19. E. 2. m. 26. pro Roberto Beudyn. If a fleet or ship under the king's wages took a prize, the king had a fourth part; the owner of the ship another fourth; the residue was divided among the takers. If the admiral were absent, he was to have due share equal to a common foldier, if present he had two shares per totum. But these proportions have been occasionally varied, and rarely been uniform in all times. Vid. Rot. Parl. 50. E. 3. n. 81. 5. H. 4. n. 59. 8. H. 4. n. 22. 20. H. 6. 8. 30. At this day the admiral hath the thirds of goods taken by private men of war as his fee, but in right of the king. Proportions of this kind vary as occasions require at the king's pleasure.

4. What shall be faid prize.

If an enemy come into the fea with the king's fafe conduct, his goods taken shall not be prize to the taker; for the safe conduct is a kind of perfonal suspention of the hostility, and accordingly they are privileged from mark and reprisal. Vide stat. 20. H. 6. cap. 1. and 14. E. 4. c. 4. whereby those letters of safe conduct ought to be involved in chancery, that it may be known to whom granted.

If the goods of an enemy are carried in the ship of a friend and bound for an enemy's country, and the ship is taken by the English, the goods are prize, but not the ship wherein they are taken, nor the other goods in it. Claus. 47. E. 3. m. 39. pro mercatoribus Hispaniae et Portugalliae, Claus. 48. E. 3. m. 24. de vinis conquestis deliberandis. But otherwise it may be of ammunition for war he shall carry. Claus. 20. E. 3. Par. 1. m. 24. dors.

If the goods of a friend be carried in an enemy's ship, although the ship be taken, the goods of the friend were to be restored, unless they were provisions or ammunition of war. But the law was altered in England by a temporary law made only for three years Rot. Parl. 14. H. 6. z. 24. and afterwards made perpetual by Rot. Parl. 20. H. 6. z. 18. st. 20. H. 6. cap. 1. viz. that if any goods are taken by English upon the seas charged in any ship belonging to the king's enemies not having letters of safe conduct enrolled, there be no restitution of the same goods to any person whatsoever friend or enemy.

If war be proclaimed by England against France or other kingdom, the merchants or their goods that are here are not to be seized as goods of enemies, unless our merchants there be so used; and that by Magna Carta cap. 30. et si sint de terrà contra nos guerrina, et tales invocantur in terrà nostrà in principio guerra, attachientur sina damno corparum suorum vel rerum, donec sciatur, quo modo mercatores terra nostra trassentur in terrà contra nos guerrina; et si nostri salvi sunt ibi, alii salvi sint in terrà nostrà. But if a forreign merchant in enmity come hither after the war proclaimed, he hath not this protection.

5. Concerning prisoners taken in warr, and to whom they belong, Vida Register 102. Clauf. 7. E. 3. par. 1. m. 15 dersa, Clauf. 27. H. 3. par. 1. m. 1.

* For Lord Hale's further observation on this chapter of Mogna Carto, for his Hist. Pl. C. v. 1. p 95.—Editor.





11. Clauft 47. H. J. m. 39. gro more about as Not in the sign of the Chapt 48. E. 3. m. 24. de white temperate deliberands. But our wife senting be of annealising the contraction for war be find carry. Class. 25. Her. i. m. 24. day.

If the goods of an enemy are carried in the frip of for an enemy's equitry, and the flip is taken by the are price, but wereth fife wherein they into taken an

